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Supreme Court of the United States

October Term, 1974
No. 74-1025

BURTICE A. HINES, *et al.*,
Petitioners,

vs.

ANCHOR MOTOR FREIGHT, INC., *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

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Supreme Court of the United States

October Term, 1974

No. .....

BURTICE A. HINES, VINCENT MARIANO, LINDSAY E. WORLEY, GRAYDON H. CROFT, JR., NOBLE W. PARTCH, EUGENE ALBAN, ARTHUR D. CARTWRIGHT, AND DWAIN O. CRAWFORD,

Petitioners,

vs.

ANCHOR MOTOR FREIGHT, INC., INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AND TEAMSTERS LOCAL UNION NO. 377,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit affirming summary judgments granted by the District Court to respondents Anchor Motor Freight, Inc. and International Brotherhood of Teamsters in this case.

OPINIONS BELOW

The opinion of the Court of Appeals has not yet been reported, but is printed in the Appendix attached hereto, *infra*, p. A9. The opinion of the District Court is unofficially reported as *Hines v. Local Union No. 377, et al.*, 72 LC ¶13,987 (N.D. Ohio 1973) and is printed in the Appendix, *infra*, p. A1.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on November 22, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether petitioners' claim under LMRA §301 for wrongful discharge is barred by the decision of a joint grievance committee upholding their discharge, notwithstanding that their union breached its duty of fair representation in processing their grievance so as to deprive them and the grievance committee of overwhelming evidence of their innocence of the alleged dishonesty for which they were discharged?

2. Whether an International Union may immunize itself from liability for breaches of the duty of fair representation committed by its locals by proclaiming their autonomy while, at the same time, retaining absolute control over their conduct, their property and their very existence?

STATUTORY PROVISION INVOLVED

Labor-Management Relations Act §301 (29 U.S.C. §185):

> *Suits by and against labor organizations—Venue, amount and citizenship*
>
> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
>
> *Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments*
>
> (b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter, and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. June 23, 1947, c. 120, Title III, §301 61 Stat. 156.

STATEMENT OF THE CASE

Petitioners, eight truck drivers discharged from their jobs by the respondent Anchor Motor Freight Company, seek to have this Court review a divided decision of the Court of Appeals for the Sixth Circuit entered on November 22, 1974, affirming summary judgments granted by the District Court in favor of respondents Anchor Motor

Freight and the International Brotherhood of Teamsters in petitioners' action for wrongful discharge and breach of the duty of fair representation. (The Court of Appeals reversed the District Court's grant of summary judgment to Teamsters Local Union No. 377.)

The relevant facts are set forth below as they pertain to wrongful discharge, unfair representation and the proceedings below respectively.

A. Wrongful Discharge

On June 5, 1967, the eight petitioners and three others were discharged from their employment as truck drivers for Anchor Motor Freight for alleged dishonesty (R. 312-314).[1] Petitioners contend that by this discharge, Anchor Motor Freight breached its collective bargaining agreement with petitioners' union, Local 377 of the International Brotherhood of Teamsters, by which Anchor agreed that:

> "The Employer shall not discharge or suspend any employees without just cause. . . ." (Art. 32, National Master Automobile Transporters Agreement, R. 418-419).

The alleged dishonesty consisted of claims that petitioners had submitted motel receipts to the Company for reimbursement for higher amounts than they had actually paid (R. 315). The evidence upon which Anchor relied (R. 317-319, 328-329) which it submitted to subsequent grievance proceedings (R. 348) and to the District Court consisted of receipts showing amounts paid in excess of amounts shown paid on the comparable motel registration cards (R. 420-426), accompanying logs and expense sum-

1. "R" refers to the page number of items reprinted in the Appendix filed in the Court of Appeals. The opinions below which are reprinted in the Appendix to this Petition will be cited as "A".

maries, the notarized statement of motel clerk Anthony Pagano swearing to the accuracy of the amounts shown on the registration cards (R. 427-433) and the notarized statements of motel owner Joseph Repicci swearing to the accuracy of the amounts shown on the registration cards and to the fact that inflated receipts were given to petitioners (R. 434-436).

Petitioners' evidence in the District Court on this issue consisted of (1) the fact that they have at all times denied paying less than was shown on the receipts they submitted (R. 279-280, 236-237, 211, 122); (2) owner Repicci's deposition testimony that he personally handled none of the transactions in question (R. 185), that his brother-in-law Pagano had handled them, having authority to sign his name (R. 184-185), that he (Repicci) had no personal knowledge of the transactions (R. 186) and that his notarized statements (R. 434-436) had been based solely on comparison of the receipts with the registration cards and his brother-in-law's word (R. 187-188); and (3) *Clerk Pagano's Deposition Testimony that he handled all of the transactions in question (R. 133-136), that the amounts shown on the receipts accurately reflect what petitioners paid and that the discrepancy between the receipts and the registration cards is attributable to his having recorded a lesser amount on the registration card and pocketed the difference (R. 137-139), that he committed perjury when he swore to the notarized statement obtained by Anchor (R. 142), and that, of his own volition, he apprised Anchor officials of these facts in 1968 (R. 143-149).*

Thus, there is no evidence of petitioners' dishonesty that survives Pagano's admission of culpability, and the evidence overwhelmingly establishes petitioners' innocence, and, therefore, their discharge is "without just cause" in violation of the collective bargaining agreement.

B. Unfair Representation

1. *Local 377 processed petitioners' grievance in an "arbitrary" and "perfunctory" fashion.*

On the day petitioners were discharged, June 5, 1967, grievance proceedings were had at the local level, at which Anchor's evidence of petitioners' alleged dishonesty (R. 420-436) was presented to Local 377 Business Agent, Abe Schwartz[2] (R. 317-318, 275). The informal meeting between company and union officials culminated in an agreement that the men would be reinstated pending submission of the dispute to the Joint Arbitration Committee in Detroit (R. 338) which proceedings were subsequently scheduled for July 26, 1967 (R. 437).

In the interim, petitioners advised their union representatives, Angelo and Schwartz, of their innocence (R. 239, 271), solicited their assistance and advice in preparing for the hearing in Detroit (R. 118, 105-106, 205-206, 219-220), and specifically suggested investigating the motel, contacting the motel owner, and obtaining or consulting a lawyer (R. 105-106, 127-128, 205-206). *Notwithstanding the substantial evidence presented by the Company at the local meeting, Angelo and Schwartz advised petitioners that they had nothing to worry about (R. 118, 219-220), that there was no way the Company could fire them and that there was no need for them to investigate or do anything (R. 106, 206). Plaintiffs were specifically advised to forget it (R. 127), to do nothing (R. 127),* and *to let Angelo take care of it (R. 118, 219).*

Petitioners heeded Angelo and Schwartz as "advice of knowing what was going on" (R. 106, 220). Prior

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2. One of two business agents assigned by Local Union 377 to "service" the employees at Anchor's Lordstown terminal. The other was John Angelo (R. 269).

to going to Detroit for the hearing, Angelo and Schwartz conducted no investigation, gathered no evidence, gave petitioners no advice of their procedural rights and engaged in no preparation other than telling the men to be there and state their case (R. 102, 127, 239-240, 276, 280-282).

At the hearing in Detroit, Angelo and Schwartz presented not a shred of evidence (R. 76, 122, 350-352), responding to the Company's evidence (R. 420-436) with nothing more than raw assertion of the petitioners' innocence and wholly unsupported charges against the motel (R. 344-345, 351). Each of the petitioners present was given the opportunity to assert his innocence as well (R. 346-347).

After the panel upheld the discharge,[3] petitioners privately retained an attorney (R. 125, 224) who went to the motel and obtained a sworn statement from owner Repicci (R. 224) indicating that he had no personal knowledge of the transactions in question, that his clerk had handled them, and that the discrepancy between the receipts and registration cards could just as likely be attributable to the clerk recording less than was actually paid (R. 442-61).

Armed with this statement, some of the petitioners returned to Detroit in October (accompanied by their attorney, Angelo, and Schwartz) to seek a rehearing from the panel based on the new evidence (R. 125). However, the requests for rehearing were unanimously denied on the ground that there was no new evidence justifying a reopening (R. 462-64) and the motel owner's statement was never considered by the grievance committee on the merits of the discharge.

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3. An unsurprising result in light of the evidence presented. Even union representatives on the panel voted against petitioners (R. 357-358).

2. *Local 377 Officials were motivated by ill will and animosity toward petitioners generated by labor relations conflicts occurring prior to the discharge.*

When Anchor Motor Freight opened its Lordstown Terminal in 1966, the Company was compelled by contract to rehire laid-off drivers from Norwood, Ohio, who came to Lordstown with seniority and entitlement to higher fringe benefits (R. 288-291). The Norwood drivers were unhappy with the less favorable dispatch system and work rules at Lordstown (R. 212-213, 300-301), pursuant to a local rider negotiated by Anchor with Teamsters Local 964 prior to the arrival of any employees and only a week or two before Local 377 assumed jurisdiction as collective bargaining agent (R. 292-296, 298). Complaints about the local rider and about the lack of opportunity to vote on its ratification produced only claims of being helplessly bound by it from Local 377 (R. 231-233).

Further, the drivers complained about a general failure of representation from Local 377 (R. 128-129), including the failure to provide a steward and committee from the opening of the terminal in April 1966 to a stormy union meeting in August of that year when John Angelo appointed a steward over the vehement objections of the men, who had elected their own at Norwood and wanted to do so at Lordstown (R. 85-87, 89). Only under threat of walkout did Angelo permit the men to elect a committee (R. 217-218). During the course of the meeting, Angelo denounced the Norwood drivers as "hillbillies" and declared that they weren't going to take over his union (R. 386-387).

The drivers' discontent with the local rider working conditions and with the representation provided by Local 377 continued into February 1967, when they took matters

into their own hands and went out on a wildcat strike (R. 88, 92, 129). Among the leaders of the wildcat strike were petitioners Worley and Croft (R. 408-413).

During this period of driver discontent with working conditions at Lordstown and even greater unhappiness with the quality and vigor of representation being provided by Angelo and Schwartz, the two business agents for Local 377 were receiving favors from the Company. Terminal Manager Eugene Babiasz loaned a Company car to John Angelo (R. 248-256) and arranged a personal automobile purchase bargain for him in Michigan (R. 257-259). Jobs were given to at least two of Abe Schwartz' relatives (R. 391-392). Meanwhile the Company was weeding out its Norwood drivers, twenty-five of the fifty-seven who had transferred to Lordstown having been terminated or quit by the end of 1967, including five of the eleven discharged for the alleged dishonesty in issue in the instant case (R. 414-417).[4]

C. Proceedings Below

This action by eight of the eleven discharged drivers was filed on June 30, 1969 in the Northern District of Ohio, Eastern Division (R. 4). On September 25, 1973, under dubious procedural circumstances,[5] the District

4. The Company had previously, but unsuccessfully, sought to discharge petitioner Worley (R. 123-124).

5. On June 1, 1972, Anchor Motor Freight filed a motion for summary judgment (R. 25) based on the identical evidence and law subsequently asserted in support of its second and successful motion filed a year later. (Both union respondents expressly opted not to file summary judgment motions within the deadlines established and extended (R. 20-24) by the District Court (R. 58-59)). On October 31, 1972 district Judge Leroy Contie overruled Anchor's first motion for summary judgment finding "substantial issues as to material facts" (R. 28).

(Continued on following page)

Court granted summary judgment to all respondents on the ground that the decision of the joint grievance committee upholding the discharges was final and binding absent a breach of the duty of fair representation by the union, of which there was insufficient evidence to warrant a trial (A1-8).

On appeal to the Sixth Circuit, the Court of Appeals unanimously reversed the judgment in favor of Local Union No. 377, concluding that there was indeed sufficient evidence of a breach of the duty of fair representation to warrant a trial, but nevertheless affirmed by divided vote the summary judgment in favor of Anchor Motor Freight, holding that the joint grievance committee's decision was final and binding in favor of the employer notwithstanding that the union breached its duty of fair representation in processing the grievance (A15-16). The Court affirmed the judgment in favor of the International Union, implicitly holding that the International could not

Footnote Continued—

Although Anchor's subsequent motion for continuance until after January 1, 1974 was overruled (R. 30-37), the case was never called for trial, notwithstanding that it was set for trial six times between September 11, 1972 and September 24, 1973 (R. 26, 27, 29, 37, 38, 39).

One year after its first motion, Anchor filed another motion for summary judgment (R. 40) based on the identical evidence and legal theories which it had urged in support of its previous motion (R. 25) which had been overruled by the Court (R. 28). This time the union respondents filed a motion for summary judgment as well (R. 42) based, however, on the same evidence and legal contentions (plus a contention by the respondent International Brotherhood of Teamsters that even assuming a wrongful discharge, and breach of the duty of fair representation by Local 377, the International was not liable therefor). Judge Contie, brushing aside petitioners' objections to the refiling of the identical motion previously overruled (R. 44-48) and to the filing by the union respondents an entire year out of rule (R. 49-59), reversed himself and granted summary judgment to all respondents (A1-8).

be vicariously liable for the torts of its Local (A15), an issue which the District Court had found it unnecessary to resolve.

Petitioners now petition this Court to review the Court of Appeals' judgments of affirmance in favor of the respondent Anchor Motor Freight and International Brotherhood of Teamsters.

REASONS FOR GRANTING THE WRIT

I. The Decision of the Sixth Circuit Below Is in Conflict with the Decisions of the Courts of Appeals of Other Circuits.

The majority below affirmed the summary judgment in favor of the respondent Anchor Motor Freight on petitioners' claim for wrongful discharge, on the ground that the decision of a joint grievance committee upholding the discharge barred their §301 action. It did so in spite of its finding that there was sufficient evidence, to warrant a trial, that respondent Local Union No. 377 had breached its duty of fair representation to petitioners in handling their grievance.

The resultant holding, that a joint grievance committee proceeding in which petitioners were not fairly represented bars their §301 action against the employer, is in direct conflict with the holdings of the other circuit courts of appeals which have decided this issue. See *Margetta v. Pam Pam Corp.*, 501 F.2d 179 (9th Cir. 1974); *Local 13, International Longshoremen's and Warehousemen's Union v. Pacific Maritime Association*, 441 F.2d 1061 (9th Cir. 1971); *Steinman v. Spector Freight System, Inc.*, 441 F.2d 599 (2d Cir. 1971).[6]

The *Margetta* case is virtually identical to the instant case in all material respects. After plaintiff Margetta's discharge had been finally upheld in arbitration,[7] she filed a complaint under §301 charging her employer with wrongful discharge in breach of the collective bargaining agreement and her union with breach of the duty of fair representation in the handling of her grievance. The district court dismissed her wrongful discharge claim against her employer on the ground that said claim was barred by the arbitration award even though her union may have breached its duty of fair representation in the arbitration proceeding. *Margetta v. Pam Pam Corp.*, 354 F. Supp. 158 (N.D. Cal. 1973). On appeal, the Ninth Circuit reversed the district court and reinstated Margetta's claim against her employer, declaring at 501 F.2d 180:

> "We have said that an employee may not attack a final arbitration decision, '. . . except on the grounds of fraud, deceit *or breach of the duty of fair repre-*

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6. In addition to the specific holdings of the Second and Ninth Circuits, three other circuits have indicated their view, by way of dicta, that a grievance proceeding in which an employee is not provided with fair representation does not bar his §301 action against his employer. See *Harris v. Chemical Leaman Tank Lines, Inc.*, 437 F.2d 167, 171 (5th Cir. 1971); *Lusk v. Eastern Products Corp.*, 427 F.2d 705, 708 (4th Cir. 1970); *Bieski v. Eastern Automobile Forwarding Co.*, 396 F.2d 32, 38 (3d Cir. 1968).

7. The decision of a joint grievance committee in the instant case is certainly entitled to no greater finality than the award of an impartial arbitration as in *Margetta*, and most commentators believe it should be entitled to much less. See, e.g., Feller, *A General Theory of the Collective Bargaining Agreement*, 61 CALIF.L.REV. 663, 837-38 (1973):

> "Decisions by joint committees are therefore appropriately treated, as Mr. Justice Goldberg reasoned in *Humphrey* [*v. Moore*, 375 U.S. 335 (1964)], as agreements of the parties, not arbitration awards."

sentation or unless the grievance procedure was a "sham, substantially inadequate or substantially unavailable"'. *Andrus vs. Convoy Co.*, 480 F.2d 604, 606 (C A 9 1973), quoting from *Harris vs. Chemical Leaman Tank Lines, Inc.*, 437 F.2d 167, 171 (C A 5 1971). Without doubt, the circumstances outlined in appellant's complaint fall within these narrowly drawn exceptions. Consequently, the district court had jurisdiction to review the merits of the wrongful discharge claim. *Steinman vs. Spector Freight System, Inc.*, 441 F.2d 599, 603 (C A 2 1971)."

In the *Steinman* case, the district court had granted the employer's motion for summary judgment in the plaintiff's §301 action for wrongful discharge on the ground that plaintiff was bound by the final decision of a joint grievance committee notwithstanding a finding by the N.L.R.B. that Steinman had not been fairly represented in the grievance proceeding. The Second Circuit reversed, holding that the district court erred in not allowing plaintiff's §301 suit to proceed and remanded the case for that purpose,[8] stating:

> "We do not agree with [the district court's] analysis, since it places undue emphasis on the form of arbitration and ignores the realities of plaintiff's plight. He has been effectively denied a fair hearing on the merits of his claim in the arbitration process and has now been similarly denied one in the federal district

8. The fact that on remand the district court held that the employer (not having been a party to the NLRB proceeding) was not bound by the NLRB finding of unfair representation and concluded (after de novo trial of the issue) that Steinman had been fairly represented, *Steinman v. Spector Freight System, Inc.*, Civil No. 1968-341 (W.D. N.Y. Feb. 16, 1972), *aff'd* 476 F.2d 437 (2d Cir. 1973), in no way detracts from the holding of the Second Circuit at 441 F.2d 599 that a meritorious claim of unfair representation by the union entitles the plaintiff to litigate his wrongful discharge claim in a §301 action against his employer.

> court. We agree that under *Republic Steel* [*Corp. vs. Maddox*, 379 U.S. 650 (1965)]—as well as under other decisions cited to us by Spector—plaintiff could not sue if he had lost in a fair arbitration. But that has not occurred and the case is therefore inapposite." 441 F.2d at 603.

Similarly in *Local 13, International Longshoremen's and Warehousemen's Union v. Pacific Maritime Association*, 441 F.2d 1061 (9th Cir. 1971) the Ninth Circuit reversed a summary judgment in favor of the defendant employers association, expressly adopting the doctrine

> "that although grievance procedures were exclusive and the arbitrator's award final, an employee may sue for breach of contract under section 301(a) if his union violated its duty to represent him fairly." *Id.*, at 1066.

Confronted with the foregoing direct holdings of the Second and Ninth Circuits (as well as consistent dicta from the Third, Fourth and Fifth Circuits)[9], the Sixth Circuit below failed or refused to even acknowledge their existence, much less attempt to explain why they were either distinguishable or unworthy of being followed. The Sixth Circuit chose simply to ignore all conflicting authority.

This kind of unreasoned, unexplained conflict among the circuits[10] causes uncertainty and loss of confidence

9. See cases cited in footnote 6, *supra*.

10. The conflict among the circuits is mirrored in the district courts. E.g., compare *Holodnak v. Avco-Lycoming Division Avco Corp.*, 381 F. Supp. 191, 199 (D. Conn. 1974) and *Chapman v. United Aircraft Corp.*, 329 F. Supp. 735 (E.D. Pa. 1971) with *Allesandrini v. American Fed'n of Musicians*, 334 F. Supp. 1152 (S.D. N.Y. 1970) and *Hill v. Aro Corp.*, 275 F. Supp. 482 (N.D. Ohio 1967). See also *Berry v. Pacific Intermountain Express Co.*, ____ F. Supp. ____, 73 LC ¶14,274 (D. N.M. 1974).

in the law and generates much unnecessary litigation. It is precisely this problem that this Court's certiorari jurisdiction was designed to remedy.

II. The Decision of the Sixth Circuit Below Is in Conflict with the Spirit of This Court's Decisions in Vaca v. Sipes, 386 U.S. 171 (1967) and Humphrey v. Moore, 375 U.S. 335 (1964).

In arriving at its decision in *Vaca v. Sipes*, 386 U.S. 171 (1967) that fair representation duty suits were not pre-empted by the jurisdiction of the National Labor Relations Board, this Court found it necessary to consider the issue "in the context of many [anticipated] §301 breach-of-contract actions." 386 U.S. at 187. The Court, recognizing that because contractual grievance procedures "have been devised and are often controlled by the union and the employer, they may well prove unsatisfactory or unworkable for the individual grievant," found it necessary "to determine under what circumstances the individual employee may obtain judicial review of his breach-of-contract claim despite his failure to secure relief through the contractual remedial procedures." 386 U.S. at 185.

The Court concluded that it would be a great injustice to leave an employee remediless where "the employer has committed a wrongful discharge in breach of [the collective bargaining] agreement, a breach which could be remedied through the grievance process to the employee-plaintiff's benefit were it not for the union's breach of its statutory duty of fair representation to the employee." 386 U.S. at 185-186. Mr. Justice White, speaking for the majority, explained:

> "We cannot believe that Congress, in conferring upon employers and unions the power to establish exclusive grievance procedures, intended to confer upon unions such unlimited discretion to deprive injured employees of all remedies for breach of contract. Nor do we think that Congress intended to shield employers from the natural consequences of their breaches of bargaining agreements by wrongful union conduct in the enforcement of such agreements. Cf. *Richardson v. Texas & N.O. R. Co.*, 242 F.2d 230, 235-236 (C.A. 5th Cir.).
>
> "For these reasons, we think the wrongfully discharged employee may bring an action against his employer in the face of a defense based upon the failure to exhaust contractual remedies, provided the employee can prove that the union as bargaining agent breached its duty of fair representation in its handling of the employee's grievance." 386 U.S. at 186.

Although it is true that the particular facts of *Vaca v. Sipes*, involved the refusal of the union to process the plaintiff's grievance to conclusion, both the letter and the logic of the Court's opinion apply equally to breaches of the duty of fair representation committed by the union in the course of processing the grievance. Thus, in brief explanation of the duty of fair representation as applied to grievances, the Court said:

> ". . . that a union may not arbitrarily ignore a meritorious grievance *or process it in perfunctory fashion.* . . ." (Emphasis added) *Id.*, at 191.

Indeed, any other rule would facilitate the easy evasion of the *Vaca* principle by the simple device of perfunctorily processing the grievance, thereby according the employee the form, but not the substance, of grievance proceedings.[11] Accordingly, each circuit court of appeals

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11. This is exactly what petitioners claim happened in the instant case. See Section IV *infra* at p. 28.

that has considered the issue[12] (except for the Sixth Circuit in the instant case) has concluded that the clear import of *Vaca v. Sipes* is that a grievance proceeding in which an employee has been deprived of fair representation cannot bar his §301 action against his employer. Typical of the other circuit courts' interpretation of *Vaca* is that in *Margetta v. Pam Pam Corp.*, 501 F.2d 179 (9th Cir. 1974):

> "Although *Vaca vs. Sipes*, 386 U.S. 171 (1967), involved a state court action against the union alone, rather than a §301 action against the union and the employer, and even though the arbitration there involved was not prosecuted to a final award, nonetheless, Justice White's in-depth discussion of an employee's rights, in circumstances such as these, must be given persuasive consideration. To us, it makes little difference whether the union subverts the arbitration by refusing to proceed as in *Vaca* or follows the arbitration trail to the end, but in so doing subverts the arbitration process by failing to fairly represent the employee. In neither case, does the employee receive fair representation. The grievance procedure is nothing less than a 'sham'.
>
> * * * * *
>
> "The fundamental teaching of *Vaca* is that somewhere along the judicial trail, the employee is entitled to a fair hearing on her grievance and, if wrongfully

12. *Holdings*: *Margetta v. Pam Pam Corporation*, 501 F.2d 179 (9th Cir. 1974); *Local 13, International Longshoremen's and Warehousemen's Union v. Pacific Maritime Association*. 441 F.2d 1061 (9th Cir. 1971); *Steinman v. Spector Freight System, Inc.*, 441 F.2d 599 (2d Cir. 1971); *Dicta*: *Harris v. Chemical Leaman Tank Lines, Inc.*, 437 F.2d 167, 171 (5th Cir. 1971); *Lusk v. Eastern Products Corp.*, 427 F.2d 705, 708 (4th Cir. 1970); *Bieski v. Eastern Products Automobile Forwarding Co.*, 396 F.2d 32, 38 (3d Cir. 1968).

> discharged, a judgment for adequate compensation or other relief. To suggest that she may sue her union is no answer. Relief against the union would not restore her job with Pam Pam. As indicated in *Vaca*, in these circumstances, adequate relief may be obtained only by joining the union and the employer." 501 F.2d at 180-81.

The rationale for applying the reasoning of *Vaca* to grievances processed to conclusion without fair representation was most recently and succinctly restated in *Holodnak v. Avco-Lycoming Division, Avco Corp.*, 381 F. Supp. 191, 199 (D. Conn. 1974):

> "The reason is that the employee's grievance can hardly have been given due consideration by the arbitrator when it was not fairly presented by his representative union."

The applicability of the principles underlying *Vaca* to grievances processed to conclusion had been recognized by this Court three years earlier in *Humphrey v. Moore*, 375 U.S. 335 (1964). This Court decided in *Humphrey* that proof of the plaintiff-employees' claim of dishonest union conduct in breach of the duty of fair representation would permit them to maintain a §301 action for breach of the collective bargaining agreement against their employer to enjoin enforcement of an otherwise final decision of a joint grievance committee on a seniority grievance.[13]

The decision of the Sixth Circuit in the instant case is most starkly revealed to affront the principles underlying *Vaca* and *Humphrey* when it is considered in light of

13. This was not, however, the technical "holding" of *Humphrey v. Moore* as the Court went on to conclude that the plaintiffs had failed to prove a breach of the duty of fair representation on the part of their union, and therefore reversed the judgment for the plaintiffs entered by the state court.

this Court's subsequent decision in *Czosek v. O'Mara*, 397 U.S. 25 (1970) holding that "damages against the union for loss of employment are unrecoverable except to the extent that its refusal to handle the grievances added to the difficulty and expense of collecting from the employer." 397 U.S. at 29. The implications of *Czosek* for the instant case (if the judgment of the Sixth Circuit is allowed to stand) is that petitioners are utterly without remedy even though they were wrongfully discharged (being wholly innocent of the dishonesty with which they were charged) and even though they were deprived of the opportunity to prove their innocence by reason of their union's arbitrary and/or bad faith processing of their grievance in breach of the duty of fair representation. Obviously, petitioners can be awarded neither reinstatement nor damages for loss of employment against their employer, respondent Anchor Motor Freight, if the summary judgment in favor of Anchor is permitted to stand, while *Czosek* precludes the recovery of damages from their union except to the extent that it "added to the difficulty and expense of collecting from the employer," which damages are arguably nothing since nothing will have been collected from the employer. Thus, petitioners will have suffered two wrongs without a remedy.

None of the implications of *Vaca v. Sipes* or *Humphrey v. Moore* for the instant case were considered by the Sixth Circuit below in arriving at its judgment affirming the summary judgment awarded to respondent Anchor Motor Freight. The Sixth Circuit simply cited without analysis this Court's *"Steelworkers Trilogy"*[14] and its own pre-

14. *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior and Gulf Navigation Company*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

Vaca decision in *Balowski v. International Union, United A., A. & A. Imp. Workers*, 372 F.2d 829 (6th Cir. 1967) as dispositive (A16).

It is hard to believe that either Congress or this Court ever intended that wrongfully discharged, unfairly represented employees such as petitioners should be left remediless. If, however, in the interest of some higher principle of national labor policy, that is to be the case, it is essential that it be so on the basis of a reasoned evaluation of the competing policy interests by this Court and not merely upon the unexplained fiat of the Sixth Circuit.

III. This Case Presents Important Issues of National Labor Policy Requiring Resolution by This Court.

A. The issues of this case have been the subject of widespread litigation in the lower courts without substantial guidance from this Court since Vaca v. Sipes, 386 U.S. 171 (1967).

That the issues presented by this case are of widespread nationwide concern is demonstrated by substantial litigation involving the identical issues in at least five other Circuits,[15] in the context of literally hundreds of fair representation cases litigated in the wake of *Vaca v. Sipes*,[16] as well as by the voluminous discussion of these issues in the post-*Vaca* law review literature.[17] All

15. See cases cited in footnotes 12 and 10 *supra*.

16. Feller, *A General Theory of the Collective Bargaining Agreement*, 61 CALIF. L. REV. 663, 855 (1973); 2 ABA LABOR RELATIONS LAW SECTION 105 (1973); SHEPARD'S UNITED STATES CITATIONS 738 (1943-1971 case ed.).

17. See, e.g., Azoff, *Joint Committees as an Alternative Form of Arbitration Under the NLRA*, 47 TUL. L. REV. 325, 345-355 (1973); Clark, *The Duty of Fair Representation: A Theoretical Structure*, 51 TEX. L. REV. 1119, 1167-1173 (1973); Feller *A General Theory of the Collective Bargaining Agreement*, 61

(Continued on following page)

of this litigation has proceeded without substantial guidance from this Court since *Vaca*,[18] with concomitant uncertainty in the law and conflict of decision. The compelling need for this Court to exercise its certiorari jurisdiction in a case such as this to resolve these conflicts has been cogently articulated by one recent commentator:

Footnote Continued—

CALIF. L. REV. 663, 836-838 (1973); Flynn & Higgins, *Fair Representation: A Survey of the Contemporary Framework and a Proposed Change in the Duty Owed to the Employee*, 8 SUFFOLK U. L. REV. 1096, 1118-1120 (1974); Lewis, *Fair Representation in Grievance Administration: Vaca v. Sipes*, 1967 SUP. CT. REV. 81, 122-126; Tobias, *A Plea for the Wrongfully Discharged Employee Abandoned by his Union*, 41 U. CIN. L. REV. 55, 89-91 (1972).

18. Only eight decisions of this Court have even cited *Vaca v. Sipes* since it was decided in 1967, and none of them resolve any of the issues discussed but left unresolved in *Vaca*: *Mangus v. A.C.E. Freight, Inc.*, 386 U.S. 482 (1967) (vacated and remanded for further consideration in light of *Vaca*); *NLRB v. Allis Chalmers Mfg. Co.*, 388 U.S. 175, 181 (1967) (held not an unfair labor practice for union to discipline members declining to honor authorized strikes); *Glover v. St. Louis-San Francisco Ry. Co.*, 393 U.S. 324, 329 (1969) (futility of contractual grievance procedures held to excuse failure to exhaust claim of racial discrimination); *Czosek v. O'Mara*, 397 U.S. 25, 26 (1970) (held complaint alleging breach of fair representation by union may be maintained independently of claim against employer required by court of appeals to be submitted to Railway Adjustment Board); *U. S. Bulk Carriers v. Arguelles*, 400 U.S. 351, 352 (1971) (seaman held entitled to sue for wages in admiralty without exhausting contractual grievance procedures due to special status of seamen as "wards of admiralty"); *Motor Coach Employees v. Lockridge*, 403 U.S. 274, 299 (1971) (state court action against union for procuring plaintiff's discharge from employment pursuant to a valid union security clause held preempted by NLRA where no "arbitrary or bad faith conduct" in breach of the duty of fair representation was claimed or proven in the proceedings below); *Ricci v. Chicago Mercantile Exchange*, 409 U.S. 289, 311 (1973) (anti-trust action held properly stayed to permit administrative consideration by Commodity Exchange Commission; *Vaca* cited in dissent arguing the inability to compel the Commission to consider the matter as analogous to submitting claim of unfair labor practice to NLRB); *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 58 n. 19 (1974) (Title VII action for racially discriminatory discharge held not foreclosed by prior submission to, and adverse decision by, contractual arbitration proceedings).

"Litigants need clear, meaningful principles as badly as the courts. Unions need to know their rights; with better understanding they could use *internal* political processes more and the courts less. Employers also have an interest in clearer legal standards. They are frequently drawn into triangular suits in which their liability for contract breach depends on the union's fair representation violation. More of these costly suits could be settled if the law were better defined."[19]

B. Review of this case is essential to the integrity of industrial grievance procedures and to the preservation of those procedures as "substitute[s] for industrial strife."

Another compelling reason for this Court to grant certiorari in this case is to protect and preserve the fundamental principle of this Court's decisions in the "Steelworkers Trilogy"[20] of reliance upon contractual grievance procedures as the primary means of resolving industrial disputes. In order for contractual grievance procedures to serve their appointed function as "substitute[s] for industrial strife,"[21] it is necessary to insure not only their integrity but also the appearance of their integrity[22] so that their results will be accepted by the losing as well as the winning participants.[23] The breach of contract-

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19. Clark, *The Duty of Fair Representation: A Theoretical Structure*, 51 TEX. L. REV. 1119, 1121-22 (1973).

20. See cases cited in footnote 14 *supra*.

21. 363 U.S. at 578

22. Cf. *Offutt v. United States*, 348 U.S. 11, 14 (1954).

23. "The smooth functioning of the grievance machinery can lead to employee faith in the proper handling of industrial disputes. When the grievance machinery breaks down either

(Continued on following page)

duty of fair representation law suit represents the only significant check against breaches of integrity of contractual grievance procedures detrimental to individual employees "stripped of traditional forms of redress by the provisions of federal labor law."[24] This checking-safety valve[25] function of §301-fair representation actions is essential to the preservation of contractual grievance machinery as "the very heart of the system of industrial self-government."[26] It is particularly important that this Court give plenary consideration to this role of §301-fair representation litigation at this time due to the rising tide of informed questioning of the integrity of industrial grievance procedures[27] (with particular skepticism directed toward the kind of joint grievance committee sys-

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Footnote Continued—

because of employer repudiation of the grievance process or because a union wrongfully refuses to press an employee's grievance, faith in the system diminishes, and employees, unsatisfied with internal solutions to disputes, seek external action. Usually, the two external remedies used are wildcat strikes and court action under the doctrine of the duty of fair representation. The latter is clearly the preferred alternative." Flynn & Higgins, *supra* footnote 17, at 1098-1099.

24. *Vaca v. Sipes, supra* at 182.

25. "Employees who seek legal remedies must have faith in the manner in which the court arrives at its conclusion; otherwise, employees will refuse to seek court action and will resolve their disputes through industrial disturbances. The doctrine of the duty of fair representation can provide aggrieved employees with the opportunity to adjudicate their disputes in a neutral forum. The success of this doctrine in helping to eliminate industrial work stoppages depends upon whether courts are willing to assume the proper role necessary to satisfy the needs of aggrieved employees." Flynn & Higgins, *supra* note 17, at 1099.

26. *United Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U.S. 574, 581 (1960).

27. See, e.g., Atleson, *Disciplinary Discharges—Arbitration and NLRB Deference*, 20 BUF. L. REV. 355 (1971); Getman, *Collyer Insulated Wire—A Case of Misplaced Modesty*, 49 IND. L. J. 57 (1973); Gould, *Labor Arbitration of Grievances Involving Racial Discrimination*, 118 U. PA. L. REV. 40 (1969).

tem employed in the instant case)[28] as they affect the rights of individual employees.[29]

C. The extent of an International Union's vicarious liability for the misconduct of its tightly controlled locals has been frequently litigated to conflicting conclusions in the lower courts but never resolved by this Court.

Finally, this case presents an additional issue, much litigated but as yet unresolved by this Court, namely whether an international union is vicariously liable for the misconduct of its locals when its Constitution provides for such extensive control and direction of the locals by the international that the locals are not truly autonomous. Thus some courts which have analyzed the Constitution of the International Brotherhood of Teamsters have concluded that its locals are not automonous bodies, but rather "subdivision[s] of International subject to International's control." *I.B.T. v. United States*, 275 F.2d 610, 614 (4th Cir. 1960); *Great Coastal Express, Inc. v. I.B.T.*, 350 F. Supp. 1377 (E.D. Va. 1972). See also *Eazor Express, Inc. v. I.B.T.*, 357 F. Supp. 158 (W.D. Pa. 1973); *Pilot Freight Carriers, Inc. v. Local 391, I.B.T.*, 375 F. Supp. 1254 (M.D. N.C. 1974) (dicta). See *Mile Branch Coal Co. v. United*

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28. See Azoff, *Joint Committees as an Alternative Form of Arbitration Under the NLRA*, 47 TUL. L. REV. 325, 329, 336 (1973); Clark, *The Duty of Fair Representation: A Theoretical Structure*, 51 TEX. L. REV. 1119, 1169 (1973); Feller, *A General Theory of the Collective Bargaining Agreement*, 61 CALIF. L. REV. 663, 836-838 (1973).

29. Indeed, this Court's confidence in the integrity of contractual grievance procedures has been sufficiently shaken that it has refused to endow their results in racial discrimination cases with the same finality accorded other claims of contract violations. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 58 n. 19 (1974).

Mine Workers, 266 F.2d 919 (D.C. Cir. 1959) for a similar holding with respect to the UMW.

In *I.B.T. v. United States*, the court held, after a thorough examination of the provisions of the International's Constitution, that the local was an agent of the International for the purposes of both service of process and vicarious liability for criminal contempt, on the ground that the Constitution

> ". . . showed such extensive control and direction of the local as to warrant the conclusion that the local is a component of the International. The local is the internal organizational means which the International employs to keep its accounts of its membership, to collect its revenues, and to execute and enforce its policies. If all of the other general and specific rights of control vested in International should prove insufficient to assure subservience of the local in a particular matter, the right to suspend the charter and seize immediate control of a local which adopts an independent course must be effective." *Id.* at 614.

Particularly apposite to the instant case is *Great Coastal Express* which reached the identical conclusion with respect to an I.B.T. Local not in trusteeship, based on the 1966 I.B.T. Constitution (the identical document which governs this case).[30]

Contrary decisions have been rendered by the Tenth and Seventh Circuits respectively in *Barefoot v. I.B.T.*, 424 F.2d 1001 (10th Cir. 1970) and *Morgan Driveaway v. I.B.T.*, 268 F.2d 871 (7th Cir. 1959). See also *Sagers v. Yellow Freight System, Inc.*, 58 F.R.D. 54 (N.D. Ga. 1972) (dicta).

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30. Exhibit N to deposition of Walter Shea, Assistant to the General President of the I.B.T.

However, the Sixth Circuit considered none of these conflicting authorities nor any of the competing policy interests involved in arriving at its decision exculpating the International, preferring to treat as dispositive the fact that one of the eight petitioners did not personally "know of any steps that [the I.B.T.] should or should not have taken." (A15).

Nor did the Sixth Circuit consider the abundant evidence in this case, in addition to the 1966 Constitution, of the I.B.T.'s reservation and exercise of direction and control of its locals, and in particular Local No. 377, in the form of the testimony of Walter Shea, Assistant to the General President of the I.B.T.,[31] correspondence between the International and Local 377 reflecting absolute International control of the Local's bylaws,[32] a telegram from International General Vice President Fitzsimmons "ordering" the allegedly autonomous Local 377 to quell the wildcat strike involved in the instant case,[33] and copies

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31. Shea testified that, among other things, the International participates in negotiating National Master Automobile Transporter Agreements (Dep. Tr. 6, 59, 67) allegedly entered into only by the locals (1967-70 Agreement, p. 1); "advises" local unions on the handling of grievances (Dep. Tr. 10); "coordinates" conference level grievance committees (Dep. Tr. 15); "assists" locals in complying with the International Constitution and their own bylaws (Dep. Tr. 16); audits the local's books (Dep. Tr. 16); "reviews" local bylaws which must be approved by the General President of the International (Dep. Tr. 17-18); conducts "policy indoctrinations" as to differences with local unions (Dep. Tr. 26); designates persons to oversee conference level grievance committees (Dep. Tr. 30); and intervenes in local wildcat strikes (Dep. Tr. 35).

32. Documents produced by I.B.T. pursuant to notice and agreement at Shea's deposition (Dep. Tr. 19) were made a part of the record in the District Court as exhibits to petitioners' brief in opposition to summary judgment. See in particular Exhibit 1k in which President Hoffa rejects a proposed amendment to the 377 bylaws which would have vested greater control in the membership at the expense of the executive board and might have averted the unfortunate occurrences in the instant case.

33. Exhibit 2.

of local charters issued by the International providing for the allegedly autonomous local to turn over to the International "all books, documents, property and funds" in the events of secession, disaffiliation, dissolution, suspension or charter revocation.[34] Moreover, there is evidence of International involvement in the very grievance proceedings involved in this case, as witness Local 377 Business Agent Abe Schwartz' testimony that (under extreme pressure from the unhappy plaintiffs) he met with General President Fitzsimmons and Anchor personnel director Daniel Sandy "to get another hearing" (R. 282-286).

In light of the extent of litigation and conflicting resolutions of this issue in the lower courts and of the Sixth Circuit's failure to consider either the evidence or the competing policy interests involved, this Court should exercise its certiorari jurisdiction to consider whether the International Brotherhood of Teamsters may immunize itself from liability for the torts of its locals by proclaiming their autonomy, while at the same time retaining absolute control over their conduct, their property and their very existence.

IV. This Case Presents a Good Vehicle for This Court to Consider and Decide the Issues Presented Herein.

The facts of this case present the competing policy interests involved in their clearest and most compelling light and therefore provide this Court with an optimal

34. Exhibits 3a-b are copies of charters issued to Local 964 in 1971 and 1952 respectively, produced by I.B.T. pursuant to notice and agreement at Shea's deposition (Dep. Tr. 51). Contrary to said notice and agreement, no legible copy of 377's charter was produced; however, the pertinent language is part of the form for all local charters.

opportunity to consider and decide the substantial and unresolved legal issues involved. There is overwhelming evidence that petitioners were innocent of the dishonesty for which they were discharged.[35] The evidence establishes that the Union's conduct in handling petitioners' grievance was at best arbitrary and irrational,[36] and in

35. The motel clerk admitted that petitioners had actually paid the amounts shown on the receipts submitted to their employer for reimbursement, that he had recorded less on the motel books and pocketed the difference, and that he had perjured himself in the affidavit used to support petitioners' discharge (R. 137-142). Moreover, the motel owner admitted that he had handled none of the transactions and that his affidavit was based wholly on the records prepared by the clerk (R. 184-188).

36. Union officials affirmatively misled petitioners into desisting from gathering their own exculpatory evidence, by advising them that there was no need for petitioners to investigate or do anything (R. 106, 206), that they should forget it (R. 127), do nothing (R. 127), and let Business Agent Angelo take care of it (R. 118, 219). This advice was coupled with assurances of certain success in retaining their jobs (R. 118, 219-220). The evidence discloses no conceivable rational basis for either the advice or the assurances. Indeed, the respondents have never even hypothesized a conceivable rational basis for this conduct by the union.

If the union had advised petitioners that the company's evidence against them was so compelling as to render petitioners' grievance futile, absent substantial countervailing evidence of innocence, and that union resources could not be devoted to processing futile grievances, there would have been a rational basis for such a position. Moreover, it would have apprised petitioners that it was their burden to investigate and to gather evidence of innocence in order to persuade the union to process the grievance. However, the union did not adopt this rational stance.

If the union had advised petitioners that while it would process their grievance, it lacked the resources to investigate or gather evidence of innocence and that petitioners must assume the burden of doing so, there would have been a rational basis for such a position and it would have afforded petitioners the opportunity to gather exculpatory evidence.

If the union had merely failed to investigate and to advise petitioners of the necessity or desirability of their doing so in their own behalf, these omissions may have constituted negligent but not necessarily irrational conduct. However, the union did not even assume this nonfeasant posture.

all probability was in "bad faith"[37] out of hostile motives toward petitioners and "friendly" motives toward the company (while the evidence concededly and inevitably falls short of that degree of proof of fraud necessary to overturn a grievance decision apart from fair representation principles).

Finally, the breach of fair representation suffered by petitioners clearly prejudiced the outcome of the grievance proceeding and the reliability of its fact-finding by depriving both the petitioners and the tribunal of the benefit of the unequivocally exculpatory evidence of the motel clerk and owner, which petitioners have demonstrated to be available.

These facts present labor law issues of nationwide concern in their clearest light for consideration by this Court.

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37. While there is no conceivable benevolent explanation for the union's apparently irrational conduct toward petitioners, there is one conceivable rational explanation for the conduct, to-wit: hostile motives toward petitioners. There is substantial evidence of a history of hostility between petitioners and union officials and of a sweetheart relationship between those officials and the company. See Statement of the Case, *supra* at pp. 9-10).

CONCLUSION

The central issue in this case is whether the eight petitioners, whose livelihoods have been jeopardized and whose good names have been ruined by demonstrably false charges of dishonesty, are to be permanently deprived of their jobs and their honor because they were given the form without the substance of a grievance hearing. If the answer (which ought not depend on whether petitioners worked in the Sixth Circuit rather than the Second or Ninth) is to be "yes", it should be so only after a reasoned consideration and explanation by this Court of the competing national labor law policy interests which compel such a result.

Accordingly, petitioners pray that this Court grant their petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX

OPINION OF THE DISTRICT COURT

(Filed September 25, 1973)

Civil Action C 69-510 Y

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BUTRICE A. HINES, *et al.*,
Plaintiffs,

v.

LOCAL UNION NO. 377, CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN & HELPERS;

INTERNATIONAL BROTHERHOOD OF TEAMSTERS; CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA;

ANCHOR MOTOR FREIGHT, INC.,
Defendants.

ORDER

Each of the defendants in the above captioned cause of action have submitted to this court renewed motions for summary judgment. On October 31, 1972, this court issued an order which stated in its entirety:

> "Upon consideration, this court finds substantial issues as to material facts. Therefore, defendants' motion for summary judgment must be denied.
>
> IT IS SO ORDERED."

Upon the refiling of the motions for summary judgment by defendants Anchor Motor Freight and Local Union No. 377, and the motion for summary judgment filed by the International Teamsters, this court has reviewed the voluminous file and briefs of parties and has come to the conclusion that the factual issues referred to by the court in its order of October 31, 1972 are not relevant to the summary judgment motions and that said motions must now be granted.

The pertinent facts of the instant case are as follows:

Plaintiffs were discharged from their employment with Anchor Motor Freight on the 27th of July, 1967, for alleged dishonesty; said dishonesty consisting of the falsifying of motel receipts. The discharges of all of the plaintiffs were processed through the grievance procedure as provided for by a contract between the local Union and the company, known as the National Master Automobile Transporters Agreement and Central Conference Area Supplemental Agreement covering truckaway, driveaway and local agreements. Plaintiffs asserted their innocence to the charges. The tangible evidence that was used against plaintiffs in the grievance procedure consisted of receipts showing that amounts paid were in excess of amounts shown paid on the comparable motel registration cards; company logs and expense summaries; a notarized statement of motel clerk, Anthony Pagano, swearing to the accuracy of the amounts shown on the registration cards; and the notarized statements of motel owner, Joseph Repicci, swearing to the accuracy of the accounts shown on the registration cards and to the fact that inflated receipts were given to plaintiffs.

Plaintiffs carried their grievance to the Union, and the Union representative, one Mr. John Angelo. They assert that they told Mr. Angelo that the motel operator

was at fault and that Mr. Angelo's response was that "there was nothing to worry about". In July of 1967, there was a meeting of the Central Conference Joint Arbitration Committee, at which time all plaintiffs were given an opportunity to present their evidence and make their arguments as to their side of the case. At that meeting local union representatives spoke on behalf of the drivers. However, the final decision of the Committee was that the discharge of the drivers was upheld.

Plaintiffs then retained an attorney who went to the motel in New York, obtained a statement from the owner of the motel, Mr. Repicci, indicating that he had no personal knowledge of the transactions in question, that the clerk had handled such transactions, and that the discrepancies between the receipts and registration cards could possibly be attributable to the clerk recording less than was actually paid. With this new information plaintiffs returned to Detroit in October of 1967, seeking a rehearing based on new evidence. However, said requests were unanimously denied on the ground that there was no new evidence justifying the reopening, and that the motel owner's statement was never considered on the merits of the discharge.

The plaintiffs now assert in the instant action, that defendant company wrongfully discharged each and every plaintiff, and that Local 377 processed plaintiffs' grievance in an arbitrary and perfunctory fashion and acted in bad faith. In response to defendants' motions for summary judgment, plaintiffs assert that it is improper for this court to grant such motions when there is an issue of intent in question, specifically, the bad faith of the Union. This court cannot agree. The logical implications of such an argument would entitle any aggrieved employee to appeal a decision by an arbitrator by merely asserting that there was bad faith on the part of the Union's repre-

sentation. Such an issue would always be denied, and thus there would always be an issue of bad faith before the court.

This court is of the opinion that the plaintiffs' actions are first barred by the doctrine of finality in arbitration awards; and secondly, is barred for failure to show facts comprising bad faith, arbitrariness or perfunctoriness on the part of the Unions. The Supreme Court has spoken out definitively in the labor area in relation to arbitration of grievances in what has become known as the *Steelworkers Trilogy*. *Steelworkers v. American Manufacturing Co.*, 363 U.S. 564 (1960); *Steelworkers v. Warrior & Gulf Co.*, 363 U.S. 574 (1960); and *Steelworkers v. Enterprise Corp.*, 363 U.S. 593 (1960). In these cases the Supreme Court established the principle of finality of arbitration. Therein, the Supreme Court stated that: "Arbitration is the substitute for industrial strife", and that it is "part and parcel of the collective bargaining process" and that the labor agreement "calls into being a new common law—the common law of a particular industry . . ." The District Court for the Southern District of Ohio, quoting from the case of *Morris v. Werner Continental Inc., et al.*, 466 F.2d 1185 (1972) stated:

> "This group of cases teaches us another thing as well, i.e. that so long as there is an absence of fraud or bad faith or demonstrated bias or collusion, the decision of the arbitrators or here, the Joint Committee, is final and binding and courts are generally powerless to interfere . . ."

This court is of the opinion that the material facts as presented by both parties, which are basically uncontroverted except as to their import, illustrate that plaintiffs were fired; that they carried through the grievance procedure; that the Union did represent them; the Joint Committee in Detroit upheld the company's position; and further, on a rehearing for new evidence, again affirmed the discharge of the employees. Thus, all of the available steps of the grievance procedure have been followed and a decision rendered. This court, in following the dictates of the Trilogy as laid down by the Supreme Court, can come to no other conclusion but that the summary judgment motions by defendants must be granted and the finality of the arbitration process affirmed.

The second argument made by plaintiffs is that under the doctrine as announced by the Supreme Court in *Vaca v. Sipes*, they are entitled to come into this court to illustrate the bad faith representation by the Union, and carry their suit forward. This argument too must fail. After careful consideration of the voluminous file involved in this case, including the depositions of Repicci and Pagano, as well as most of the plaintiffs, the court finds that plaintiffs have failed to reveal even a threshold issue of bad faith. The asserted bad faith instances as purported by plaintiffs in its brief in opposition to the motion for summary judgment include the following:

1. That some of plaintiffs were Norwood drivers who had originallly been laid off and who were rehired at the new Lordstown Plant;
2. That several of plaintiffs were unhappy with a local rider and the lack of opportunity to vote on its ratification that was negotiated by Anchor Motor Freight and Teamster Local 964;
3. That drivers, in general, complained about the failure of representation from Local 377 when it took over, including a failure to provide a steward and a committeeman from the opening of the terminal in 1966;

4. That during the course of a meeting, involving this rider and the selection of committeemen, which was hotly contested, Angelo denounced the Norwood drivers as hillbillies and declared that they weren't going to take over his Union;

5. That there was a wild-cat strike in February of 1967 as a result of the working conditions and discontent over the local rider;

6. That plaintiffs, or some of them, were instrumental in this strike;

7. That during the period in question, Lordstown Terminal Manager, Eugene Babiasz, loaned a company car to John Angelo and arranged a personal automobile purchase for him in Michigan;

8. That the company gave jobs to two relatives of Abe Schwartz;

9. That the company had tried to fire plaintiff Worley before;

10. That 25 of the 57 Norwood drivers hired by Lordstown had either terminated or quit by the end of 1967;

11. That defendant Union presented not a single piece of paper in response to the charges against the plaintiffs at the grievance hearings.

From these inferences, the court is asked to further infer that therefore defendant Union acted in bad faith in processing plaintiffs' grievances.

The court is of the opinion that basing an inference upon an inference would be improper, and that the above stated facts, even if taken as true, would not support a prima facie case of bad faith against the Union. In

Vaca v. Sipes, 386 U.S. 171 (1967), the Supreme Court mandates that an employee be precluded from litigating his grievance if the Union did not breach its duty of fair representation. Under the language of *Vaca v. Sipes*, a Union does not breach its duty of fair representation unless the Union official is personally hostile to the employee or the Union official processes the grievance in bad faith. Hostility and bad faith are not demonstrated by refusal to take a grievance to arbitration. Further, there is a distinction made between Union incompetence in handling a grievance and actual hostility, malice or bad faith on the part of the Union officials in handling a grievance. See *Dill v. Greyhound Corp.*, 435 F.2d 231 (6th Cir. 1970); see also *Lewis v. Magna American Corp.*, 472 F.2d 560 (6th Cir. 1972). In the case of *Whitmore v. Greyhound Lines, Inc.*, 27,620 Labor Relations Cases, par. 13,821, the court therein states:

> "Unlike Lewis, the present Union continued to process plaintiff's grievance to the final step of arbitration, even after plaintiff made a written confession of the theft. Furthermore, the defendant Union, as plaintiff concedes, attempted to have the plaintiff reinstated with defendant Greyhound, even after this adverse arbitration award. This is hardly the personal hostility envisioned by Vaca, Dill and Lewis."

In the instant case, the defendant Union attempted to have the employees reinstated and, in fact, were successful in having the employees retained in their employment until the grievance procedure had been carried forward, contrary to the employer's decision to have each and every one of the plaintiffs immediately discharged. While the acts of the defendant Union may not meet professional standards of competency, and while it might have been advisable for the Union to further investigate

the charges against plaintiffs, the mere fact that the Union exercised bad judgment does not in and of itself constitute bad faith or personal hostility. See *Whitmore v. Greyhound Lines, Inc.*, supra. Plaintiffs further argue as stated above, that cases involved in intent and bad faith are not proper for summary judgment motions. However, defendant Unions list numerous cases which this court has reviewed and in which summary judgment has been granted to the defendants. See *Balowski v. General Motors*, 372 F.2d 829 (6th Cir.); *Lewis v. Magna American Corp.*, 472 F.2d 560 (6th Cir.); *Broniman v. The A & P*, 353 F.2d 559 (6th Cir.); *Walden v. International Brotherhood of Teamsters, Local 71*, 468 F.2d 196 (4th Cir.); *Price v. International Brotherhood of Teamsters*, 457 F.2d 605 (3rd Cir.).

This court, therefore, finds no genuine issues as to any material facts and hereby sustains all defendants' motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

/s/ LEROY J. CONTIE, JR.
U. S. District Judge

OPINION OF THE COURT OF APPEALS

(Filed November 22, 1974)

No. 73-2105

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BUTRICE A. HINES, *et al.*,
Plaintiffs-Appellants,

v.

LOCAL UNION NO. 377, *et al.*,
Defendants-Appellees.

ON APPEAL from the United States District Court for the Northern District of Ohio, Eastern Division.

Before: PHILLIPS, Chief Judge, EDWARDS and McCREE, Circuit Judges.

McCREE, J. delivered the opinion of the Court, in which PHILLIPS, C. J., joined. EDWARDS, J. (p. 8) filed a separate opinion concurring in part and dissenting in part.

McCREE, Circuit Judge. This is an appeal from the grant of a motion for summary judgment in favor of defendants in an action by eight truck drivers for damages caused by their wrongful discharge by their employer and by the breach of the duty of fair representation on the part of their union. The primary question we consider is whether summary judgment in favor of defendant local union was proper in the light of plaintiffs' allegation, as-

sumed to be true, that because of political animosity, local union officials processed their grievance in a perfunctory manner. We decide that summary judgment should not have been entered for the local union and that plaintiffs should have been permitted to submit proofs in support of the allegations of bad faith and perfunctory treatment.

The case was filed by discharged employees on June 30, 1969, approximately two years after their discharge had been upheld by the arbitration committee designated in the contract to hear employees' grievances. On October 31, 1972, the district judge denied defendant Anchor Motor Freight's motion for summary judgment, finding "substantial issues as to material facts." On May 31, 1973, Anchor filed another motion for summary judgment in which the unions joined. After reviewing the depositions and briefs submitted by the parties, the district court entered summary judgment in favor of all defendants. This appeal followed.

The facts considered relevant by the district court are as follows:

> Plaintiffs were discharged from their employment with Anchor Motor Freight on the 27th day of July, 1967, for alleged dishonesty; said dishonesty consisting of the falsifying of motel receipts. The discharges of all of the plaintiffs were processed through the grievance procedure as provided for by a contract between the local union and the company, known as the National Master Automobile Transporters Agreement and Central Conference Area Supplemental Agreement covering truckaway, driveaway and local agreements. Plaintiffs asserted their innocence to the charges. The tangible evidence that was used against plaintiffs in the grievance procedure consisted or [sic] receipts showing that amounts paid were in excess

> of amounts shown paid on the comparable motel registration cards; company logs and expense summaries; a notarized statement of motel clerk, Anthony Pagano, swearing to the accuracy of the amounts shown on the registration cards; and the notarized statements of motel owner, Joseph Repicci, swearing to the accuracy of the accounts shown on the registration cards and to the fact that inflated receipts were given to plaintiffs.
>
> Plaintiffs carried their grievance to the Union, and the Union representative, one Mr. John Angelo. They assert that they told Mr. Angelo that the motel operator was at fault and that Mr. Angelo's response was that "there was nothing to worry about." In July of 1967, there was a meeting of the Central Conference Joint Arbitration Committee, at which time all plaintiffs were given an opportunity to present their evidence and make their arguments as to their side of the case. At that meeting local union representatives spoke on behalf of the drivers. However, the final decision of the Committee was that the discharge of the drivers was upheld.
>
> Plaintiffs then retained an attorney who went to the motel in New York, obtained a statement from the owner of the motel, Mr. Repicci, indicating that he had no personal knowledge of the transactions in question, that the clerk had handled such transactions, and that the discrepancies between the receipts and registration cards could possibly be attributable to the clerk recording less than was actually paid. With this new information plaintiffs returned to Detroit in October of 1967, seeking a rehearing based on new evidence. However, said requests were unanimously denied on the ground that there was no new evidence

justifying the reopening, and that the motel owner's statement was never considered on the merits of the discharge.

Under Rule 56(c) of the Federal Rules of Civil Procedure, the burden is on the party seeking summary judgment to establish that there is no genuine issue as to any material fact. In addition, the inferences to be drawn from the affidavits, exhibits and depositions filed in connection with the motion must be viewed in the light most favorable to the party opposing the motion. *United States v. Diebold,* 369 U.S. 654 (1962).

Accordingly, we consider, as did the district court, the matters before it from which bad faith or arbitrary conduct of the local union could be inferred. They consist of the motel clerk's admission, made a year after the discharge was upheld in arbitration, that he, not plaintiffs, pocketed the money; the claim of the union's failure to investigate the motel clerk's original story implicating plaintiffs despite their requests; the account of the union officials' assurances to plaintiffs that "they had nothing to worry about" and "that there was no need for them to investigate;" the contention that no exculpatory evidence was presented at the hearing; and the assertion that there existed political antagonism between local union officials and plaintiffs because of a wildcat strike led by some of the plaintiffs and a dispute over the appointment of a steward, resulting in denunciation of plaintiffs as "hillbillies" by Angelo, the union president.

After considering all material submitted with the motion for summary judgment, the district court held that under *Vaca v. Sipes,* 386 U.S. 171 (1967), no breach of the duty of fair representation was shown.

A union breaches its duty of fair representation when it acts arbitrarily, discriminatorily or in bad faith. *Vaca*

v. Sipes, 386 U.S. at 190; *Humphrey v. Moore,* 375 U.S. 335, 350 (1964); *Ford Motor Co. v. Huffman,* 345 U.S. 330, 338 (1953); *Johnson v. General Drivers, Warehousemen & Helpers, Local 89,* 488 F.2d 250, 251 (6th Cir. 1973); *Dill v. Greyhound Corp.,* 435 F.2d 231, 238 (6th Cir.), *cert. denied,* 402 U.S. 986 (1970). For example, it "may not arbitrarily ignore a meritorious grievance or process it in a perfunctory manner." 386 U.S. at 191. In *Vaca,* the plaintiff was dismissed from his job because of poor health. He contested the dismissal and the union initiated a grievance. However, upon receipt of an unfavorable medical report it dropped the grievance at the fourth step just prior to arbitration, and urged the employee to accept a company offer to refer him to a rehabilitation center. The employee refused the offer and filed suit against the union. The Supreme Court determined that the union did not breach its duty of fair representation because it attempted to obtain medical evidence in support of the employee's case, and tried to secure less vigorous work or rehabilitative treatment for him. There was no evidence of personal hostility by any union official toward the grievant.

Although this appeal does not concern a union decision to short circuit the processing of a grievance, the facts assumed as true by the district court were that the union made no attempt to obtain evidence favorable to the employees, and that some of its officials were hostile towards them.

Appellants contend that had the local union investigated the motel clerk, Pagano, as requested, it would have discovered that he had pocketed the money, and that appellants were innocent of any wrongdoing. The failure to investigate, by itself, is insufficient to fix liability on the union since "proof that the union may have acted negli-

gently or exercised poor judgment is not enough to support a claim of unfair representation." *Dill v. Greyhound Corp.*, 435 F.2d at 238, *quoting Bazarte v. United Transp. Union*, 429 F.2d 868, 872 (3d Cir. 1970). In *Dill*, we reversed the trial court's finding of a breach of the duty of fair representation because, although the union failed to proceed to arbitration, there was no proof that its decision was the result of hostility or malice, nor was there any evidence that it acted in bad faith in settling the grievance. 435 F.2d at 238.

In this appeal, there are allegations of bad faith and the assertion of a reason for it, and the district court's ruling that "plaintiffs have failed to reveal even a threshold issue of bad faith" should not have been made without affording them the opportunity to prove this contention.

Appellants have met the requirement that supporting affidavits

> alleging the breach of a Union's duty of fair representation must contain more than "conclusory statements alleging discrimination. In particular plaintiffs must make a showing that the action or inaction of the statutory representative complained of was motivated by bad faith, for the gravamen of the rule is 'hostile discrimination.'" Gainey v. Brotherhood of Railway Employees, 313 F.2d 318, 323 (C.A. 3). "[C]onclusory words * * * without a concomitant showing of lack of good faith [does] not set forth a claim."

Balowski v. International Union, United A., A. & A. Imp. Workers, 372 F.2d 829, 835 (6th Cir. 1967), *quoting Hardcastle v. Western Greyhound Lines*, 303 F.2d 182, 186 (C.A. 9) *cert. denied*, 371 U.S. 920 (1962).

A case where questions of good faith or fraud are at issue should not be summarily decided without the

taking of testimony unless it is clear that recovery cannot be had on any state of the evidence. *Williamson v. Wilbur-Rogers, Inc.*, 381 F.2d 710, 721 (6th Cir. 1967), *S. J. Groves & Sons Co. v. Ohio Turnpike*, 315 F.2d 235, 238-39 (6th Cir. 1963).

In *St. Clair v. Local Union No. 515*, 422 F.2d 128 (6th Cir. 1969), we upheld a jury verdict for an employee against his union in a fair representation case where the local contended that a directed verdict should have been granted. Although "the evidence of bad faith [was] minimal, there [was] enough to present a jury question" (422 F.2d at 131) that the union should have protested more vigorously, that it should have urged its members to walk off the job in protest, or that a union official declined to act because of hostility towards the employees. Accordingly, we determine that the district court erred in granting summary judgment in favor of the local union.

Although we hold that defendant local union's motion for summary judgment was improperly granted, we determine that the district court did not err in granting the motions made by the International Union and by the employer.

There was no claim that the local union was acting for or at the direction of the International, and appellant Hines, when asked on deposition what steps the International failed to take in investigating the company's charge replied: "I don't know of any steps that they should or should not have taken." Since there was no genuine issue as to a material fact about the conduct of the International Union, the grant of summary judgment was proper.

Appellant contends that the employer did not have "just cause" to discharge them because of the recantation

of the motel clerk. As we said in *Balowski v. International Union, supra,* at 833,

> [i]t is apparent that what plaintiff is attempting to do is to relitigate his grievance in this proceeding. This he cannot do when the collective bargaining agreement provides for final and binding arbitration of all disputes, absent a showing of fraud, misrepresentation, bad faith, dishonesty of purpose, or such gross mistake or inaction as to imply bad faith on the part of the Union or the employer. Cf. Smith v. Evening News Association, 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246.

No evidence of any misconduct on the part of the employer to avoid the arbitration award is suggested. Although appellants argue that there was a conspiracy between the union and the company, none of the evidence[1] offered to substantiate this claim is sufficient under the requirement of *Bawloski, supra,* that something more than suspicion be shown. Accordingly, we hold that the district court correctly granted summary judgment in favor of Anchor Motor Freight. *See United Steelworkers of America v. American Manufacturing Co.,* 363 U.S. 564 (1959), *United Steelworkers of America v. Warrior & Gulf Navigation Co.,* 363 U.S. 574 (1959), *United Steelworkers of America v. Enterprise Wheel & Car Corp.,* 363 U.S. 593 (1959).

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1. The "facts" plaintiffs rely upon to show that both the union and company were working together to discharge the drivers are as follows:

(1) That a company manager loaned a company car to Angelo, the local President, and arranged a personal automobile purchase for him in Michigan.

(2) That the company gave jobs to two relatives of Schwartz, another union official.

(3) That the company had tried to fire one of the appellants before.

(4) That 25 of the 57 Norwood drivers hired by Lordstown, had either been terminated or quit by the end of 1967.

Summary judgment in favor of Anchor Motor Freight and the International Union is affirmed.

Reversed and remanded to vacate the judgment in favor of the local union and for further proceedings consistent with this opinion.

•

EDWARDS, Circuit Judge, concurring in part and dissenting in part. I agree with the majority opinion in affirming the judgment of the District Court in dismissal of the case as to the International Union. I also agree with the majority opinion in reversing for hearing as to plaintiffs' allegations concerning the Local Union.

I think, however, that similar issues of fact were presented by the pleadings concerning plaintiffs' charges against the employer which should not have been dealt with on summary judgment, and as a consequence, as to the employer the case should likewise be reversed and remanded for hearing.

JUDGMENT OF THE COURT OF APPEALS

(Filed November 22, 1974)

No. 73-2105

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BUTRICE A. HINES, *et al.*,
Plaintiffs-Appellants,

v.

LOCAL UNION NO. 377, *et al.*,
Defendants-Appellees.

ON APPEAL from the United States District Court for the Northern District of Ohio, Eastern Division.

This cause came on to be heard on the record from the United States District Court for the Northern District of Ohio and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the Summary Judgment in favor of Anchor Motor Freight and the International Union is affirmed. Judgment of the District Court in favor of the local union is reversed and the case is remanded for further proceedings. It is further ordered that Hines, et al. should recover their costs against Local Union No. 377, the International Union and Anchor Motor Freight should recover their costs from Hines as itemized below and that the execution therefore issue out of said District Court.

Entered by Order of the Court

JOHN P. HEHMAN
Clerk

Supreme Court, U. S.
FILED
JUL 3 1975
MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

October Term, 1974

No. 74-1025

BURTICE A. HINES, *et al.*,
Petitioners,
vs.
ANCHOR MOTOR FREIGHT, INC., *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petition for Certiorari Filed February 15, 1975
Certiorari Granted April 21, 1975

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No. C69-510

In the United States District Court

FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

BUTRICE A. HINES, *et al.*,
Plaintiffs,

vs.

LOCAL UNION NO. 377, etc., *et al.*,
Defendants.

RELEVANT DOCKET ENTRIES

6/30/69	Complaint filed. Summons issued. Three copies of each to Marshal.
9/26/69	Separate answer of Defendant Anchor Motor Freight, Inc., filed. Copy mailed 9/26/69.
9/29/69	Answer of Defendant International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, filed. Copy mailed 9/26/69.
10/ 1/69	Answer of Defendant Local Union 377, International Brotherhood of Teamsters, etc. filed. Copy mailed 9/29/69

2/ 4/72 Motion of Defendant, International Brotherhood of Teamsters, etc., to enlarge time to file motion for summary judgment filed. Copies mailed 2/3/72.

5/ 3/72 Order filed. Contie, J. (International to file S.J. Mo. by June 1, 1972). Copy mailed to Knee, Goldfarb, Green, Schwartz.

5/ 8/72 Motion of Defendant, Anchor Motor Freight, for extension of time for filing a Motion for Summary Judgment to 6/1/72 filed. No served.

6/ 1/72 Motion for Summary Judgment by Defendant, Anchor Motor Freight, Inc., and Supporting Brief filed. Copy mailed 6/1/72.

8/18/72 Notice of trial mailed (Nov. 6, 1972).

10/31/72 Order that the Court finds substantial issues as to material facts, ordered that defendant's motion for summary judgment is denied filed. Contie, J. Copies mailed 10/31/72.

10/30/72 Notice of trial mailed (Jan. 22, 1973).

2/21/73 Motion of Defendant for continuance. Motion for Change of Venue and supporting brief filed. Copies mailed 2/21/73.

3/ 6/73 Endorsed Order overruling Motion of the Defendant, Anchor, for continuance, change of venue, etc., filed. Contie, J. Copies mailed 3/7/73.

5/31/73 Motion of Defendant, Anchor Motor Freight, Inc., for Summary Judgment with supporting brief filed. Copy mailed 5/31/73.

5/31/73 Appendix I to Brief in Support of Anchor's Motion for Summary Judgment. Copy mailed 5/31/73.

5/31/73 Joint Motion for Summary Judgment by the Defendants, International Brotherhood of Teamsters, Chauffeurs, Warehousemen's Helpers of America and by Local Union No. 377 with Brief in support and case law (separate covers) filed. Copy mailed 5/31/73.

6/25/73 Objection of plaintiffs to consideration of Defendant, Anchor Motor Freight, Inc.'s second motion for summary judgment and supporting brief filed. Copies mailed 6/25/73.

6/25/73 Objection of plaintiffs to consideration of joint motion for summary judgment by defendants, International Brotherhood of Teamsters and Local Union No. 377 filed. Copies mailed 6/25/73.

9/25/73 Order filed. Contie, J. (The Court sustains all defendants' motions for summary judgment pursuant to Rule 56 of the F.R.C.P.) Copies mailed 9/25/73.

In the United States Court of Appeals for the Sixth Circuit

11/28/73 Appellee Anchor Motor Freight's Motion To Strike Parts of Plaintiffs-Appellants' Designtion of Appendix, And Supporting Brief. (Granted–Peck).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)

COMPLAINT

(Filed June 30, 1969)

Plaintiffs allege:

1. That this is an action for damages under the Labor Management Relations Act of 1947 as amended, U.S.C. Title 29, Sections 141 et seq. and 159(a). Jurisdiction is conferred on this court by 29 U.S.C. 185 and 28 U.S.C. 1337.

2. The defendant, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and defendant, Local 377, thereof, are duly organized and existing labor organizations within the meaning of the Labor Management Relations Act of 1947 as amended. 61 Stat. 137, 29 U.S.C. Section 152(5).

3. That at all times hereinafter mentioned, plaintiffs were members in good standing of said local and are employees as defined by Section 152(3) of said Act.

4. That upon information and belief, the defendant, Anchor Motor Freight, Inc., was a corporation organized and existing pursuant to the laws of the State of Delaware, and having an office for the transaction of business in the City of Cleveland, County of Cuyahoga and State of New York, and engaged in commerce as defined by 29 U.S.C. Section 152(2).

5. That heretofore and prior to the 27th day of July, 1967, the plaintiffs were employees of the defendant, Anchor Motor Freight, Inc., subject to a collective bargaining agreement entitled "National Master Automobile Transporters Agreement".

6. That on the aforesaid date the said plaintiffs were discharged by the said defendant, Anchor Motor Freight, Inc., for allegedly taking money under false pretenses constituting dishonesty.

7. That the charges of dishonesty made against the plaintiffs herein were false and groundless and wholly without evidentiary support and with a minimum amount of investigation, could have been completely disproven.

8. That the said defendants did not investigate the charges brought against the plaintiffs herein and made no effort to ascertain the truth as to the said charges.

9. That the defendant unions violated their duty of fair representation of the plaintiffs herein in the enforcement of their rights under the aforesaid collective bargaining agreement, and arbitrarily, discriminatorily and in bad faith deprived them of their contract employment rights and the right to a fair hearing.

10. That the said defendants permitted the discharge of the plaintiffs to be sustained upon insufficient evidence and without proof.

11. That the said defendants joined in an alleged arbitration proceeding which was wholly devoid of due process in that it did not follow the contractual grievance procedures, did not provide the proper notice to the plaintiffs, sustained the plaintiffs' discharges without evidence of wrongdoing, and failed on an application for a rehearing

to consider evidence on the part of the plaintiffs absolving them of any wrongdoing.

12. That the defendant, Anchor Motor Freight, Inc., acquiesced in the activities of the defendant unions as aforesaid for the purpose of discharging the said plaintiffs.

13. That the plaintiffs have never been accorded a fair hearing on the merits of their grievance because of the failure of their union to represent them properly.

AS A SECOND SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST THE DEFENDANTS HEREIN, PLAINTIFFS ALLEGE:

14. Repeat and reallege the allegations contained in Paragraphs "1" to "11" inclusive, with the same force and effect as if fully set forth herein.

15. That the defendants knowingly used false information to sustain the discharge of the plaintiffs in violation of their right to fair and non-discriminatory treatment under the contractual grievance procedures.

AS A THIRD, SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST THE DEFENDANTS HEREIN, PLAINTIFFS ALLEGE:

16. Repeat and reallege the allegations contained in Paragraphs "1" to "11" inclusive, with the same force and effect as if fully set forth herein.

17. Upon information and belief, that the said defendants, with knowledge of the falsity of the charges against the plaintiffs herein, conspired with each other for the purpose of causing the discharge of the said plaintiffs.

AS A FOURTH, SEPARATE AND DISTINCT CAUSE OF ACTION AGAINST THE DEFENDANTS HEREIN, PLAINTIFFS ALLEGE:

18. Repeat and reallege the allegations contained in Paragraphs "1" to "13" inclusive, with the same force and effect as if fully set forth herein.

19. That the defendants herein violated the terms of the aforesaid National Master Automobile Transporters Agreement by failing to grant the plaintiffs a fair hearing as aforesaid, by failing to give them the appropriate warnings as required by the said agreement, by discharging them without good cause as required by the said agreement and by failing to follow the contractual grievance procedures.

20. That by reason of the foregoing, plaintiffs have sustained damages in the sum of Eight Hundred Thousand Dollars ($800,000.00) in compensatory damages, and demand Two Hundred Thousand Dollars ($200,000.00) in punitive damages for defendants' willful and malicious conduct.

WHEREFORE, plaintiffs demand judgment against the defendants in the amount of One Million Dollars ($1,000,000.00) with interest, together with reinstatement of their employment rights and all employment benefits and for such other, further and different relief as to the Court may seem just and proper.

Berkman, Gordon & Kancelbaum
/s/ Niki Z. Schwartz
Attorney for Plaintiffs
1320 The Superior Building
Cleveland, Ohio 44114
SUperior -1-5245

(Jury Demand omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)

SEPARATE ANSWER OF DEFENDANT, ANCHOR MOTOR FREIGHT, INC.

(Filed September 26, 1969)

Now comes the defendant, Anchor Motor Freight, Inc., and for its answer to the plaintiff's complaint states:

FIRST DEFENSE

1. Admits that the defendants, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Local Union No. 377 (IBT), are duly organized and existing labor organizations.

2. That the defendant, Anchor Motor Freight, Inc., is a duly organized corporation and has an office for the transaction of business in the City of Cleveland among other places.

3. Defendant admits that the plaintiffs were employees of the defendant, Anchor Motor Freight, Inc., and were subject to a collective bargaining agreement.

4. Your answering defendant admits that the plaintiffs were discharged but that they were discharged pursuant to the grievance machinery of the National Master Automobile Transporters Agreement, a labor agreement, and for just and good cause.

5. For want of knowledge this defendant denies the allegation in the third paragraph of the complaint.

6. Your answering defendant denies the allegations in paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of the plaintiff's complaint.

7. Your answering defendant denies each and every allegation not specifically admitted to be true.

SECOND DEFENSE

8. For its second defense your answering defendant states, in addition to the allegations contained in the foregoing paragraphs, and realleged herein with equal force, that the plaintiffs were discharged for good and sufficient cause consistent with the pertinent labor agreement, that Local Union 377 (IBT) was the collective bargaining agent for the plaintiffs and that said local would bargain and represent the plaintiffs and did process the grievances of the plaintiffs in a diligent and conscientious manner through the grievance machinery of the pertinent labor agreement and that the plaintiffs did exhaust their appeals through said grievance machinery in connection with the discharges and that the arbitral processes pursuant to the labor agreement did sustain the discharges as being consistent with the agreement and for good and sufficient cause.

9. Your answering defendant further alleges that the complaint does not state a cause of action upon which relief may be granted.

WHEREFORE, having fully answered the defendant, Anchor Motor Freight, Inc., prays that the complaint may be dismissed and that it may go hence with its costs

and for such other and further relief as the court may deem just and equitable.

/s/ Bernard S. Goldfarb
Attorney for Defendant
1625 The Illuminating Building
55 Public Square
Cleveland, Ohio 44113
781-0383

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)

ANSWER

(Filed September 29, 1969)

Now comes the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a defendant herein, and for an answer to the Complaint heretofore filed herein, admits, denies and alleges as follows:

FIRST DEFENSE

1. Answering paragraph 1 of the Complaint, this answering defendant admits the allegations contained therein.

2. Answering paragraph 2 of the Complaint, this answering defendant admits the allegations contained therein.

3. Answering paragraph 3 of the Complaint, this answering defendant admits the allegations contained therein.

4. Answering paragraph 4 of the Complaint, this answering defendant admits the allegations contained therein.

5. Answering paragraph 5 of the Complaint, this answering defendant admits the allegations contained therein.

6. Answering paragraph 6 of the Complaint, this answering defendant denies knowledge sufficient to form a belief and, therefore, puts the plaintiffs to the proof with respect to the allegations contained therein.

7. Answering paragraph 7 of the Complaint, this answering defendant denies knowledge sufficient to form a belief and, therefore, puts the plaintiffs to the proof with respect to the allegations contained therein.

8. Answering paragraph 8 of the Complaint, this answering defendant denies each and every allegation contained therein.

9. Answering paragraph 9 of the Complaint, this answering defendant denies each and every allegation contained therein.

10. Answering paragraph 10 of the Complaint, this answering defendant denies each and every allegation contained therein.

11. Answering paragraph 11 of the Complaint, this answering defendant denies each and every allegation contained therein.

12. Answering paragraph 12 of the Complaint, this answering defendant denies each and every allegation contained therein.

13. Answering paragraph 13 of the Complaint, this answering defendant denies each and every allegation contained therein.

14. Answering paragraph 14 of the Complaint, this answering defendant sets forth and repeats the answers made in paragraph 1 through 11 inclusive above with the same force and effect as if fully set forth herein.

15. Answering paragraph 15 of the Complaint, this answering defendant denies each and every allegation contained therein.

16. Answering paragraph 16 of the Complaint, this answering defendant sets forth and repeats the answers made in paragraphs 1 through 11 inclusive above with the same force and effect as if fully set forth herein.

17. Answering paragraph 17 of the Complaint, this answering defendant denies each and every allegation contained therein.

18. Answering paragraph 18 of the Complaint, this answering defendant sets forth and repeats the answers made in paragraphs 1 through 13 inclusive above with the same force and effect as if fully set forth herein.

19. Answering paragraph 19 of the Complaint, this answering defendant denies each and every allegation contained therein.

20. Answering paragraph 20 of the Complaint, this answering defendant denies each and every allegation contained therein.

21. Further answering defendant International Brotherhood of Teamsters denies each and every, all and singular the allegations contained in plaintiff's Complaint not herein admitted or otherwise qualified.

SECOND DEFENSE

1. For its Second Defense defendant International Brotherhood of Teamsters adopts all of the allegations of its First Defense and makes them a part of this defense as if repleaded herein.

2. As and for a first affirmative defense the answering defendant alleges that an arbitration decision rendered by the Central Conference Automobile Transporters Joint Arbitration Committee on October 27, 1967 sustained the discharge of the plaintiffs. This decision was rendered by the Joint Arbitration Committee pursuant to its authority under the collective bargaining agreement and constitutes a final and binding disposition of the claim by the plaintiffs that their discharge violated the collective bargaining agreement.

THIRD DEFENSE

1. For its Third Defense defendant International Brotherhood of Teamsters adopts all of the allegations of its foregoing defenses and makes them a part of this defense as if repleaded herein.

2. Further answering affirmatively, defendant alleges that it has not engaged in the representation of individual grievants in the grievance procedure as set out in the National Master Automobile Transporters Agreement since the burden of representation is upon the local union which is signatory to the foregoing collective bargaining agreement under which a grievant is working. Defendant further answering alleges that it did not participate in the representation of plaintiffs and did not present any of the plaintiffs' grievances at any stage of the grievance procedure and hearings, and further answering affirma-

tively, defendant International Brotherhood of Teamsters alleges that none of the plaintiffs herein requested the defendant to represent plaintiffs or to participate in the grievance procedure and hearings.

WHEREFORE, defendant International Brotherhood of Teamsters having fully answered prays that the Complaint be dismissed and that defendant goes hence with its costs.

Knee & Snyder
by: /s/ Robert C. Knee, Jr.
11 W. Monument Building
Dayton, Ohio 45402
Phone: 461-5310 (Code 513)

Goldberg, Previant & Uelmen
by: /s/ David Leo Uelmen
6th Floor Midland Bank Bldg.
211 W. Wisconsin Avenue
Milwaukee, Wisconsin 53203
Phone: 271-4500 (Code 414)

Attorneys for Defendant International Brotherhood of Teamsters

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)

ANSWER

(Filed October 1, 1969)

FIRST DEFENSE

1. Comes now Defendant Local Union 377, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and for its Answer and First Defense to Plaintiffs' Complaint admits the allegations set forth in Paragraphs 1, 2, 3, 4, 5, and 6, and denies each and every other allegation in Plaintiffs' Complaint not specifically admitted.

SECOND DEFENSE

2. As its second defense, Defendant local union says that it processed Plaintiffs' grievances over their discharges by Anchor Motor Freight, Inc. through the grievance procedure established by the Collective Bargaining Agreement under which Plaintiffs were employed. Plaintiffs were given, at each step of the grievance procedure, every opportunity to defend themselves against the charges made by their employer, and were conscientiously, fully, and diligently represented by representatives of Defendant local union through all the prescribed steps of the grievance procedure.

3. The grievances over Plaintiffs' discharges were heard by the Central Conference of Automobile Transporters Joint Arbitration Committee after due notice to Plain-

tiffs. The Committee, after hearing the evidence and after giving Plaintiffs full opportunity to be heard, upheld Plaintiffs' discharges. This determination, under the collective bargaining agreement, is final and binding upon all parties to this proceeding.

WHEREFORE, having fully answered, Defendant demands that the Complaint be dismissed at Plaintiffs' costs.

Green, Schiavoni, Murphy & Stevens
By /s/ Eugene Green
Attorney for Defendant Local Union 377
602 Stambaugh Building
Youngstown, Ohio 44503

(Certificate of Service omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)

MOTION FOR SUMMARY JUDGMENT BY DEFENDANT, ANCHOR MOTOR FREIGHT, INC.

(Filed June 1, 1972)

Now comes the defendant, Anchor Motor Freight, Inc., and pursuant to Rule 56 of the Federal Rules of Civil Procedure moves the Court for summary judgment on behalf of this defendant for the reason that there is no genuine issue as to any material fact and that this defendant is entitled to a judgment as a matter of law.

Defendant, Anchor Motor Freight, Inc., bases this motion upon

(a) the Complaint;

(b) the Answers;

(c) the Affidavit of Neill L. Thomas;

(d) the Depositions of Daniel Sandy (2), Abe Schwartz, John Angelo, Lindsay E. Worley, Graydon H. Croft, Jr., Butrice A. Hines, Joseph D. Repicci, Anthony Pagano, and Walter J. Shea.

(e) Exhibits

Respectfully submitted,

/s/ Bernard S. Goldfarb
Attorney for Defendant, Anchor Motor Freight, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)

ORDER

(Filed October 31, 1972)

Upon consideration, this Court finds substantial issues as to material facts. Therefore, defendants' motion for summary judgment must be denied.

IT IS SO ORDERED.

/s/ Leroy J. Contie, Jr.
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)

MOTION FOR CONTINUANCE, MOTION FOR CHANGE OF VENUE

(Filed February 21, 1973)

Now comes Defendant Anchor Motor Freight, Inc. and moves the Court to continue the trial of the above entitled action until after January 1, 1974, on the ground that subsequent to January 1, 1973, radio, television, and newspaper coverage of some activities of co-defendant Local Union 377, publicity which Defendant Anchor asks the Court to judicially notice, has so aroused public interest in the affairs of the Local and has created such hostility toward it that any jury selected in this area at this time would be prejudiced against Defendant Local 377 and against its co-defendants.

Defendant Anchor Motor Freight, Inc. also moves, in the alternative, that the Court transfer this action to the Western Division of the United States District Court for the Northern District of Ohio, on the grounds that if a continuance of the trial is not granted such a transfer would be in the interest of justice and would be necessary to avoid prejudice to the defendants.

A brief in support of these motions is attached hereto.

/s/ Bernard S. Goldfarb
Attorney for Defendant Anchor Motor Freight, Inc.

(Supporting brief omitted in printing)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)

MOTION FOR SUMMARY JUDGMENT BY DEFENDANT, ANCHOR MOTOR FREIGHT, INC.

(Filed May 31, 1973)

Now comes the defendant, Anchor Motor Freight, Inc., and pursuant to Rule 56 of the Federal Rules of Civil Procedure moves the Court for summary judgment on behalf of this defendant for the reason that there is no genuine issue as to any material fact and that this defendant is entitled to a judgment as a matter of law.

Defendant, Anchor Motor Freight, Inc. bases this motion upon

(a) the Complaint;

(b) the Answers;

(c) the Affidavit of Neill L. Thomas;

(d) the Depositions of Daniel Sandy (2), Abe Schwartz, John Angelo, Lindsay E. Worley, Graydon H. Croft, Jr., Butrice A. Hines, Joseph D. Repicci, Anthony Pagano, and Walter J. Shea;

(e) Exhibits.

Respectfully submitted,

/s/ Bernard S. Goldfarb
Attorney for Defendant Anchor Motor Freight, Inc.

/s/ Alan M. Rauss
Attorney for Defendant Anchor Motor Freight, Inc.

(Supporting brief omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)

JOINT MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA AND BY LOCAL UNION NO. 377

(Filed May 31, 1973)

Now comes the defendants International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and Local Union No. 377, and pursuant to Rule 56 of the Federal Rules of Civil Procedure, moves the court for summary judgment on behalf of these defendants for the reason that there is no genuine issue as to any material fact and that these defendants are entitled to judgment as a matter of law.

Defendant Unions base this motion upon:

A. The Complaint.

B. The Answers of all defendants.

C. The Affidavit of Donald Tabor attached to this motion and the exhibits incorporated therein.

D. The depositions of Daniel Sandy, Butrice Hines, Joseph Rapicci, Anthony Pagano, Walter Shea, Abe Schwartz, John Angelo and Lindsay E. Worley.

E. All the Exhibits filed in this case and attached to the motion for summary judgment heretofore filed by

the defendant Anchor Motor Freight, Inc., copies of which are currently in the court file.

Dated this 24th day of May, 1973.

/s/ David Leo Uelmen
Goldberg, Previant & Uelmen
211 W. Wisconsin Avenue
Milwaukee, Wisconsin 53203
414-271-4500

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Dayton, Ohio 45402
513-461-5310

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602 Stambaugh Building
Youngstown, Ohio 44503
743-5101

Attorneys for the Defendant Unions

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

(Title omitted in printing)

PLAINTIFFS' OBJECTION TO CONSIDERATION OF DEFENDANT ANCHOR MOTOR FREIGHT INC.'S SECOND MOTION FOR SUMMARY JUDGMENT

(Filed June 25, 1973)

Plaintiffs object to consideration of the defendant Anchor Motor Freight Inc.'s second motion for summary judgment on the ground that it presents the identical contentions of fact and law presented by Anchor's first motion for summary judgment filed on June 1, 1972, which motion was denied by the Court on the merits.

Wherefore, plaintiffs contend that Anchor's second motion for summary judgment should be summarily denied.

Respectfully submitted,

/s/ Niki Z. Schwartz

Gold, Rotatori, Messerman & Hanna

Counsel for Plaintiffs

(Supporting brief omitted in printing)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

(Title omitted in printing)

DEFENDANT - APPELLEE ANCHOR MOTOR FREIGHT'S MOTION TO STRIKE PARTS OF PLAINTIFFS-APPELLANTS' DESIGNATION OF APPENDIX, AND SUPPORTING BRIEF

(Filed November 28, 1973)

Now comes Defendant-Appellee Anchor Motor Freight, Inc., and moves the Court strike Paragraphs 5, 6(d), and 6(o) from the Plaintiffs-Appellants' Designation of Appendix, for the reason that the materials included in those paragraphs were not before the district court in this action and are therefore not properly part of the record on appeal. The parts of the appellants' Designation to be stricken are as follows:

1. All of the excerpts of trial testimony in *Scott v. Anchor Motor Freight, Inc., and Teamsters Local Union No. 377*, U.S.D.C., N.D. Ohio, No. C68-252, 6th Cir. No. 73-1703, 1704 and 1705, which the appellants have included in Paragraph 5 of Plaintiffs-Appellants Designation of Appendix. The *Scott* case is completely separate and distinct from the instant case. The plaintiffs, the facts, and the legal issues involved in the instant case are very different from those involved in *Scott*. Further, the excerpts of testimony from *Scott* designated by the appellants were not before the district court when it sustained the defendants' Motions for Summary Judgment.

2. Defendant Anchor Motor Freight, Inc.'s Answers to Interrogatories in *Whitten* and *Scott v. Anchor Motor*

Freight, Inc., et al., which the appellants have included in Paragraph 6(d) of their Designation of Appendix. The *Whitten* case is separate and distinct from the *Scott* case, and it is separate and distinct from the instant case. Each of these cases involves different plaintiffs, different facts, and different legal issues. In addition, the designated Answers to Interrogatories were not before the district court in the instant case.

3. Indictments of John J. Angelo and Abraham Schwartz, and judgments of conviction thereon, which the appellants have included in Paragraph 6(o) of their Designation of Appendix. These indictments and judgments of conviction were entered approximately five years after the occurrence of the events in question in the instant case. None of the parties to the instant case were implicated in any way in the criminal acts of Angelo and Schwartz. And, the indictments and convictions were not part of the evidence presented either in support of or in opposition to the defendants' Motions for Summary Judgment.

WHEREFORE, Defendant-Appellee Anchor Motor Freight, Inc. prays the Court strike all of Paragraph 5, Paragraph 6(d), and Paragraph 6(o) from Plaintiffs-Appellants' Designation of Appendix, and order that the materials referred to in those paragraphs be excluded from the Appendix in this case.

/s/ Bernard S. Goldfarb

/s/ Alan M. Rauss

Attorneys for Defendant Anchor Motor Freight, Inc.

BRIEF IN SUPPORT OF MOTION

Rule 10(a) of the Federal Rules of Appellate Procedure states as follows:

> Composition of the Record on Appeal. The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

The language of the Rule limits the record on appeal to materials which were before the court below.

Rule 30, Fed.R.App.P., provides the mechanism through which the parties designate those parts of the record to be included in the Appendix. Rule 30(a) states that the Appendix shall contain "(1) the relevant docket entries in the proceeding below; (2) any relevant portions of the pleadings, charge, findings or opinions; (3) the judgment, order or decision in question; and (4) any other parts of the record to which the parties wish to direct the particular attention of the court." Although the Rule does state that neither the parties nor the court are limited to consideration of those parts of the *record* designated, it does not contain any provision for the inclusion in the Appendix or for the consideration by the Court of evidence which was not part of the record before the district court when it decided the case.

In the instant case, the appellants have designated excerpts of testimony and Answers to Interrogatories from *Scott v. Anchor Motor Freight, Inc., et al.*, a case tried in the United States District Court for the Northern District of Ohio, and currently pending before this Court (6th Cir. Case Nos. 73-1703, 1704, 1705). They have also

designated Answers to Interrogatories that were given in *Whitten v. Anchor Motor Freight, Inc., et al.*, a case that was recently tried in the United States District Court for the Northern District of Ohio (Case No. C67-870). Both of these cases are entirely separate and distinct from the instant case. The plaintiffs in *Scott, Whitten,* and the instant case are all different. The facts and the issues involved in each case are also very different. Although, coincidentally, two of the defendants in the instant case were also defendants in *Scott* and *Whitten,* the cases arose in different factual contexts, presented different issues, involved different plaintiffs, and are separate and distinct causes of action. The indictments and convictions of John Angelo and Abraham Schwartz, which were also designated by the appellants, are also separate and distinct from the instant case. The indictments and convictions came approximately five years after the events in question in the instant case. None of the parties to this lawsuit were in any way implicated in the conduct leading to those indictments and convictions. The issues involved in those criminal proceedings and the issues presented in the instant case are completely different. Further, *none* of the aforementioned materials, i.e., the excerpts of testimony from the *Scott* case, the Answers to Interrogatories from *Scott* and *Whitten,* and the indictments and convictions of Angelo and Schwartz, were before the District Court when it sustained the Defendants' Motions for Summary Judgment in the instant case.

The courts have uniformly held that matters not part of the record below will not be considered by the Court of Appeals. In *Heath v. Welmick,* 173 F.2d 156 (9th Cir. 1949), certain documents had been made part of the record on appeal, notwithstanding the fact that they had not been offered in evidence below. The Court of Appeals

held that "[t]he cause must be tried here upon the record made at the original trial. . . . A trial before a referee or a District Court would be a nullity if the record could be so changed here. Likewise, substantial injustice might be done to a litigant." In *Stearns v. Hertz Corp.,* 326 F.2d 405 (8th Cir. 1964), the Court refused to consider an affidavit produced for the first time in the appeal proceedings. The Court stated that "the affidavit is not to be considered here because it was not presented to the trial court. The appeal is to be determined upon the record below." And, in *Durkin v. Lovknit Mfg. Co.,* 208 F.2d 665 (5th Cir. 1953), the Court of Appeals refused to make part of the record on appeal matters which were not part of the record below. The reasoning behind these decisions is both simple and compelling. The function of the appellate tribunal is to correct any errors committed by the court below, not to provide a trial de novo. As the Seventh Circuit held in *Dempsey v. Guaranty Trust Co. of New York,* 131 F.2d 103 (7th Cir. 1942), "the correctness of the order must be considered under the facts and circumstances of the case as presented below, and from the same standpoint as that occupied by the court granting it." Clearly, materials which were not before the district court when it made the ruling in question cannot be considered in determining whether or not the trial court committed error in the proceedings below. These extraneous materials cannot be made part of the record on appeal.

In the instant case, the appellants have included in their Designation of Appendix several items which were not part of the record upon which the district court based its decision. The excerpts of testimony from the *Scott* case to which the appellants referred in Paragraph 5 of their Designation were never made part of the record in the instant case. The Answers to Interrogatories which

Defendant-Appellee Anchor Motor Freight, Inc., gave in the *Scott* case and in the *Whitten* case, referred to in Paragraph 6(d) of the appellants' Designation, have likewise never been introduced in evidence in any way and were not before the court below in this lawsuit. And, the indictments and convictions referred to in Paragraph 6(o) of the appellants' Designation are also outside of the record in this case. These items were not considered by the court below. As the cases cited above clearly indicate, the materials included in Paragraphs 5, 6(d) and 6(o) cannot properly become part of the record on appeal in this case.

For the aforementioned reasons the Court should strike all of Paragraph (5), Paragraph (6)(d), and Paragraph 6(o) from the appellants' Designation of Appendix, and order that the materials referred to in those paragraphs be excluded from the Appendix in this case.

Respectfully submitted,

/s/ Bernard S. Goldfarb
/s/ Alan M. Rauss

Attorneys for Defendant-Appellee Anchor Motor Freight, Inc.

(Certificate of Service omitted in printing)

DECISIONS BELOW

Note:

The decisions of the District Court and the Court of Appeals are printed in the Petition for Certiorari at pages A1 and A9, respectively.

EXCERPTS FROM DEPOSITIONS

Deposition Testimony of Butrice A. Hines

[72*] Q. Now, did you talk about your case with Angelo prior to going to Detroit? A. Sure.

Q. And what did you tell him? A. I asked him what we should do.

Q. Why did the company fire you? **[73]** A. They fired us for dishonesty.

Q. And what did they say you had done, Mr. Hines, that was dishonest? A. They said we had turned in motel receipts for an amount that wasn't the amount that we paid.

Q. Paid in fact? A. Yes.

Q. And what did you say to Mr. Angelo about that charge? A. I told him it was false.

Q. And did you present to him any documents indicating that it was false? A. You couldn't, because the company had the receipts.

Q. Had your receipts? A. Yes. Not my receipt, the motel receipt.

Q. A receipt that at one time had been in your possession? A. Right.

Q. And you had given it to the boss and the boss gave you some money? A. Right.

Q. Now, wasn't it the case that the company said, "Look, here is the receipt that shows a certain dollar figure, and here is the registration card back at the motel, and it shows a lesser figure"? A. This is very possible.

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*The boldface numerals in brackets throughout the testimony and exhibits indicate the pagination of the duplicated Appendix as filed in the United States Court of Appeals for the Sixth Circuit.

Q. But that is what the boss said? **[74]** A. They said this. I mean, I went to the first hearing, but that's all I remember. They said it was a lesser amount on the motel receipt than the motel receipt, the registration.

Q. Yes. Try to keep focused in on the time before you got down there to Detroit the first time.

Did you say to Mr. Angelo, "We just plain didn't do it"? A. Right.

Q. And did you give him any explanation as to why there might be a variance between the figures on the receipts and on the registration cards at that time? A. I told him I didn't have no control over the motel operator. He could put down what he wants.

Q. And what did Angelo say about that? A. He said, "You ain't got nothing to worry about."

Q. Then in fact your case was presented in Detroit? A. Yes.

Q. When was that, in July of '67, the first time through? A. Yes. I don't know what the particular date was, but it was approximately so. I think it was around the last of July.

Q. Did you go to that meeting? A. Yes, sir.

Q. And who was there for 377? A. John Angelo and Dave Schwartz, BA for 377.

* * * * *

[76] Q. Did any representative of 377 speak on behalf of you? A. Angelo got up and spoke.

Q. What did he say? A. He said that we was falsely accused.

Q. And did he offer any evidence that you were falsely accused? A. No.

Q. He just said it? A. Yes.

Q. How long did he talk when he said it? A. I don't know that. Very short.

Q. Mr. Schwartz, did he speak? A. I don't recall Abe Schwartz speaking.

Q. Did somebody speak up for the company? A. I believe Mr. Sandy spoke for the company.

Q. Who is Mr. Sandy? A. The representative for Anchor Motor Freight.

[77] Q. Is he a management guy? A. Yes, he is management.

Q. What did he say? A. He said he had receipts. He said he had the registration cards and a statement from the motel operator.

Q. And did he present these documents to that committee? A. Right.

* * * * *

Q. Right. Did they come down with a decision? A. Yes, they did.

Q. Which was what? A. Discharge.

Q. "Out," they said? A. Yes.

* * * * *

[78] Q. Did you go back and talk to somebody from 377 about that? A. Yes.

[79] Q. Who did you talk to? A. Abe Schwartz and John Angelo.

Q. What did they say? A. Well, they didn't say much at all.

Q. They didn't say, "Well, the hell with it, you're out, we'll see you around"? A. We was trying to make a move then.

Q. What does that mean? A. We asked if we should get a lawyer.

Q. What did they say? A. They said, "You might as well."

* * * * *

Q. Well, in fact they went ahead and took some steps to get you a rehearing, didn't they? A. I don't know on that.

Q. You did in fact have a rehearing at a subsequent date? A. I wasn't there on the rehearing date.

Q. Do you know from your own knowledge whether there was a rehearing? A. There was another meeting.

[81] Q. Now, let's go back to that hearing in Detroit, the one you did attend in July. What was unfair about the hearing procedure? I know the decision was no good, as you see it, but what was wrong with the procedures before a decision as you saw them there? A. I made my statement and I was there in person and told them what happened.

Q. What was unfair about that procedure? A. At the time I didn't know anything of what the procedure was. I would say that it was possibly fair in the sense of people listening to you.

Q. Whatever you had to say you got to say it? A. You got to say it, sure.

Q. And by "you" I mean you as an individual got your say? A. Oh, yes, we got the say.

Q. In paragraph 15 of your complaint you talk about the defendants, and let's talk for a moment just about Local 377. This says that 377 knowingly used false information to sustain your discharge. What do you mean by that? **[82]** A. I don't know what information 377 received.

Q. How can you say they then consciously and knowing about it used false information against you? A. There is no answer to that, because I don't know nothing on that.

Q. Okay. You certainly don't know that the International Union consciously used false information to do you in, you don't know that? A. I don't know that for a fact.

Q. In paragraph 17 of your complaint you say that 377 and the International and the boss got together and decided among themselves to do you in. What facts have you got for that? A. No facts.

* * * * *

[85] Q. Fine. When you arrived at the Lordstown terminal had a steward been elected to represent the employees? A. No.

Q. Had committeemen been elected to represent the employees? A. No.

Q. What labor organization was the recognized collective bargaining agent for the employees at Lordstown when you first were assigned to that depot? A. I was told that it was 377 Youngstown.

* * * * *

[86] Q. When did you first attend a meeting of employees of Anchor Motor Freight conducted by Local 377? A. I believe the first meeting that I recall was during the model change of that year, '66 to '67 model at the hall. I would presume it would be in August, thereabouts. John Angelo called a meeting at that time at the Teamsters Hall.

Q. I think you testified John Angelo was the Secretary-Treasurer of Local 377 and the meeting you have referred to is a meeting of Anchor employees only? A. Right, the drivers.

[87] Q. What was the purpose of that meeting? A. The purpose of that was to see, as far as the drivers—I can't say that the drivers requested, because I don't really know how the meeting came about, but the meeting was held and we—when I say "we" I mean the drivers—had asked for a steward election.

Q. Was a steward elected at that meeting? A. No.

Q. Were procedures agreed upon or arrived at for the election of a steward? A. No.

Q. Was anything done with respect to the appointment of a steward? A. Yes.

Q. What was done? A. John Angelo appointed one.

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[88] Q. Was there a wildcat strike? A. Yes.

Q. When was this conducted? A. February of '67.

Q. Were you involved in that strike? A. Yes, I was.

Q. How long did the strike last? A. 17 days.

* * * * *

[89] Q. Do you know the circumstances under which the committee was elected? A. Yes.

Q. What were those circumstances? A. Well, the committee was elected because Mr. Angelo appointed a steward, and this is talking about a bunch of drivers that work for Anchor Motor Freight, they had always selected our steward in Norwood. This is a practice with us. He said it wasn't a practice with them.

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[90] Q. Now, after the committee and the union officers met with the company for the purpose of arriving at an agreement to end the strike, did they meet with the employees of Anchor Motor Freight to tell them what the terms of the agreement were? A. At that time I don't recall if they called a general meeting, because everybody was spread out.

Q. How did you know? How did you personally know the strike was over? A. At the time that you are referring to everybody had gone to the hall. They had asked the drivers to meet at the hall.

Q. Who asked? A. The committeemen.

Q. And the drivers did that? A. Yes.

Q. Were you one of them? A. Yes.

Q. What happened when you got to the hall? A. Well, they told us under what circumstances they could get us back in on our job.

Q. What were those circumstances that they said they could get you back in on? A. If we would go back to work, Mr. O'Neill of Anchor [91] Motor Freight would—in other words, go over the agreement. In other words, what I am trying to say, the present agreement would be changed.

Q. The employees were dissatisfied with the collective bargaining agreement that was in effect with the company? A. The collective bargaining—

Q. Well, it was an agreement, a contract? A. Yes, but it wasn't a contract that anybody agreed to. It's the local rider we are talking about.

Q. What is a local rider? A. It's agreement between the company and the drivers and the local that represent them on local conditions and matters.

Q. Is that a local rider that was negotiated by Teamster Local 377? A. No.

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[92] Q. Is this the explanation for the strike, that there was a protest to the rider? A. Partially.

Q. And what else? A. Equipment. Equipment was sad.

Q. You were opposed to the equipment. You were objecting to the equipment that you were required to use? A. Not the equipment that we were required to use, but the condition of the equipment that it was in.

Q. And for this reason we had a 17-day strike, for these reasons? A. Partially, yes.

Q. Do we have other reasons? A. Offhand I don't know. I mean, as you hit them I will say if that is the reason.

Q. But as far as you know as of this moment two reasons? A. Poor working and conditions.

Q. They were opposed to the rider and they were opposed to the equipment and the men went out for 17 days? A. Right.

Q. And the agreement was negotiated by the committee and officers of Local 377 for return to work, is that correct? **[93]** A. Yes.

Q. If I understood your testimony you testified that you were told at the meeting that Mr. O'Neill, who is the owner of Anchor Motor Freight or principal stockholder— A. Right.

Q. Effective officer? A. Yes.

Q. —said that he would review the contract? A. Yes, he would sit down and negotiate with the officials of the union and the committee and write a new working agreement.

Q. Was that acceptable to you personally? A. Yes.

Q. Was it acceptable to the rest of the men at Anchor Motor Freight? A. It must have been. We went back to work.

Q. Immediately thereafter? A. Right.

Q. Was anybody punished for having participated in that walkout? A. No, not at the time.

Q. All employees came back? A. Yes.

Q. This is so even though you had all received a written notice from the company advising you that your job was ended **[94]** unless you were returned? A. It was not a written notice, it was a telegram.

Q. A telegram advising you of that? A. Yes.

Q. Well, following that, this was in February, were there any other occasions when you met with representatives of Local 377? A. At the time I don't think there was that I can recall.

Q. Any other wildcat strikes between February and May, 1967? A. No.

Q. In May of 1967, is this the time when you received notice that you were going to be discharged? A. Approximately so, yes.

Q. Had you had any warning? A. No.

Q. Prior to that time that the company was unhappy with anything that you had done? A. No.

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[95] Q. Up until May of 1967, and all the times you have worked for Anchor Motor Freight did you have any occasion to file any grievances against any company practices, you personally? A. No.

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[97] Q. Did you tell Mr. Angelo that you always got a personal receipt for the amount of money that you paid? A. For the money that I paid?

Q. That you got a personal receipt for that? A. Yes, sir.

* * * * *

Q. Do you remember how long before the hearing it was before you arrived at the building? A. Oh, approximately half hour or so.

Q. Did all of you get together before you went into the hearing? A. Yes.

Q. What union officers were there? A. Abe Schwartz and John Angelo.

Q. And when the hearing began were you introduced? A. Yes.

Q. Who introduced you? A. John Angelo I believe was the one that introduced us **[99]** to the Panel.

Q. When you were introduced were you questioned by anyone as to your version of what took place? A. No. They heard both sides of it from Angelo and Mr.

Sandy and then they asked if any of us would like to have our own say, you know, of what happened and we did.

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[100] Q. And what you told that Panel is the same thing that you told Mr. Angelo in meetings prior to meeting with the Panel? A. Right.

Q. You told the Panel everything you told Mr. Angelo? A. As far as I can recall I did, yes.

Q. And did you ask to have any other witnesses testify in your own behalf? A. No.

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[101] Q. I think you testified that at the time of the hearing you felt that there was nothing improper about the way the hearing was going on? A. As far as I know.

Q. Everything that you saw looked regular? A. Well, I don't know what is regular and what isn't.

Q. You wouldn't say this was a kangaroo court proceeding, what was going on? A. No.

Q. Nor did you feel that that was so? A. Well, I wouldn't say that. How I felt would be immaterial.

Q. Let me ask you this: Did you say everything you wanted to say at that hearing? A. I made my statement and that's all.

Q. Did you say all you had in mind to say? You thought about the testimony that you were to give? A. Yes.

Q. Did you give all of the testimony? A. All the testimony that was pertinent to the facts.

* * * * *

Q. But in any event, is there anything on which you **[102]** would offer facts to support a factual basis to support the assertion that with a minimum amount

of investigation the union—and I assume in this instance Local 377—could have completely disproven the charges against you? What would Mr. Angelo have done or Mr. Schwartz have done? A. Partially checked with the motel people, got their own story.

Q. So this is where you say they fell down, that they personally didn't go to the motel people? A. They didn't send no representative.

Q. That you know of? A. That we know of, yes.

Q. They got their information from you, isn't that right? A. Yes.

Q. And from the other men that were fired? A. Yes.

Q. And from whatever the company may have told them? A. Right.

Q. But as far as you know they didn't make any other independent investigation? A. No, nothing else other than just asking us and the company.

Q. Now, had they gone to the motel what do you say they **[103]** would have found out? A. I don't know what they would have found out. That's what we wanted them to find out, what the score was and why this man had made those statements.

Q. No question in your mind that he had made the statements? A. Sure. They had his name down.

Q. Who had his name down, the company had the name? A. Right.

Q. What is the man's name? A. The one you mentioned a while ago.

Q. Repucci? A. Yes.

Q. Is that the man who was the clerk? A. No, he is the owner.

Q. What did Repucci say? What was the statement they had from him? A. He said that he had given us receipts for more money than what we paid for.

Q. And Repucci was the owner of the motel? A. Yes, as far as I know.

Q. You didn't take it upon yourself to question Mr. Repucci? A. No.

Q. As far as you know none of your committee members **[104]** had taken it upon themselves to question Mr. Repucci? A. No.

Q. But you felt the union officers should have done that? A. Yes.

Q. And is that the only thing that you felt they should have done in the way of investigation? A. Well, to get the second hearing we had to hire our own people to do it. We based it on new evidence which they disallowed.

Q. But getting back to this amount of investigation that you say you think the union should have done, it consists of interrogating Mr. Repucci, is that right? A. Right.

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[105] Q. As of the time you went to Detroit was there anything that you would ask Mr. Angelo to do that he didn't do as of the time? A. No. I just asked him what was needed to be done.

[106] Q. And you accepted what he had to say? A. Well, sure.

Q. So the answer to my question was, no, you did not ask him to do anything other than what he did do, is that right? A. No. That is a little twisted there. I asked Mr. Angelo if there is anything else that we need to do, and he says, "No, you have no problem."

Q. Did he refuse to do anything that you asked him to do prior to that first hearing? A. He said there was no need to go to the motel.

Q. Did you ask him to go to the motel? A. Yes.

Q. Prior to that? A. I asked him if we should go down and see about the motel, see the people or anything to that effect.

Q. You asked whether you should do that? A. The drivers in a general area, the 11 concerned, yes.

Q. And he said you didn't have to do that? A. It wasn't necessary.

Q. Did you ask him to do it? You didn't ask him? A. It's not necessary for me to do it, is what he said.

Q. You accepted his answer and you then did not ask him to do it either? A. Right.

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[107] Q. Were you accusing the union of having engineered your dismissal? A. Not in the strict sense that they did engineer it, no.

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[108] Q. Was there some other procedure the contract called for? A. No.

Q. This is what the contract said you were entitled to? A. Yes.

Q. This is the procedure you were afforded, is that right? A. Yes.

Q. What you were really unhappy about is you didn't win, isn't that right? A. No, not necessarily. Stop at my motel some time and I'll give you a receipt. You don't dig what I mean. You come in and pay me $10, right? I give you a receipt for $10. Then I put down there $9, and John Doe walks in the door and says he works for me, what do you put down there?

Q. Everything you have just told me you told this to a Panel, isn't that right? A. Yes.

Q. And this Panel, I think you testified, consisted of employee representatives and union representatives, right? A. Yes.

Q. And yet that same Panel to whom you told it concluded that the employer was justified in discharging you? A. He might have been after I called one of the Panels a rotten s.b.

Q. Who did? **[109]** A. Dan Tabor at the union hall.

Q. Prior to the hearing? A. During the strike.

Q. How many people were on the Panel? A. How many all together on the Panel? The only one I know personally—he could have been the only one on the Panel and I wouldn't know the rest of them.

Q. You called him an s.o.b.? A. A lying—

Q. A lying s.o.b. in February of 1967? A. Right.

Q. Did you see him between then and the time of the hearing? A. No.

Q. Did you object to his participation on the Panel? A. I didn't even know he was on it until we got there.

Q. When you saw him on the Panel did you raise any objection? A. Why should I? John Angelo said it was all right.

Q. Did you or didn't you? A. No.

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[110] Q. Your petition alleges, and I want to know on what you would base this, that the defendants—and I am speaking for 377—knowingly used false information to sustain the discharge of the plaintiff.

Do you claim that 377 did that? A. I don't know if they did or didn't.

Q. You are not claiming it? A. I'm not claiming. I don't know.

Q. You have no evidence to support that? A. I don't know.

Q. To support that allegation, no personal knowledge of anything that was a part of that? A. I don't know.

Q. Do you have any facts on which you base the allegation **[111]** that Local 377 violated your contractual rights under the contract? Do you know of anything that 377 did or officers of 377 did that interfered with your contractual rights? A. Offhand I couldn't say that any of my rights had been violated.

Q. And I think you have also already testified you have no facts on which to base the conclusion that Local 377 and the employer conspired together to fire you? A. No.

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Deposition Testimony of Lindsay E. Worley

[112] Q. Did he say why you were fired? A. I asked him why and he said he didn't know. That was the message he received over the phone.

Q. After you got that message what did you do? A. I went downstairs, out in the yard and there were several men there and the dispatcher also told me that there had been a meeting set up between the company and Local 377 for 10:00 a. m., and then I went downstairs and I think I talked to Mr. Croft and some of the other fellows and I called 377 myself.

Q. What did you say to them? A. One of the girls answered the phone, and they informed me that Mr. Schwartz was on his way over.

Q. Then he showed up? A. Yes.

Q. Was there any other 377 man with him? A. Sammartino.

Q. Were you sort of a spokesman for the fired employees? A. I wouldn't say that.

Q. Everyone was talking? A. Everyone had their say, yes.

Q. What did you tell Schwartz and Sammartino about what had happened? A. Oh, they seemed to know that we had been discharged **[113]** for dishonesty. Of course, I don't think they really knew the details too much themselves until they found out. When they confronted me with the charge I says I had no knowledge of it.

Q. Were they specific as to what the dishonesty was at that meeting? A. Well, he said something like falsifying a motel receipt for two bucks, or something like that. I can't recall his exact words.

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[114] Q. What story did the company have at that time as to why you were fired? A. At that time I think Mr. Sandy presented the letters, a copy of the receipt, copy of our logs, along with the registration card as evidence and said that we were being discharged because we had presented the receipt to the company for reimbursement when we actually paid a less amount.

Q. Did he also have a statement from a guy named Repucci? A. Yes, about a paragraph or so.

Q. Did he have your driver's logs for those days? **[115]** A. Yes.

Q. What use did he make of the log, if any? A. I guess to relate that we had logged into this town and showed a layoff in this town.

Q. Batavia? A. Batavia, New York.

Q. What was the response of Schwartz to that? A. I can't recall exactly. I know Mr. Schwartz said he didn't feel that was enough evidence, it looked to him like the clerk was maybe pocketing the money or someone else, and this was the stand that Mr. Schwartz took.

Q. Did you speak out at that meeting? A. I certainly did.

Q. What did you say? A. I went right along the same lines. I told the company officials the same thing

I told Mr. Schwartz previously, that when I go into a motel I register, ask the man how much, get my receipt, and that's it. What he does with the registration card is their business.

Q. Was there a decision made at that time to put you back on the job? A. We negotiated there a couple hours, I would presume. We recessed for lunch and we came back from lunch and I can't recall whether we went back in the meeting in the basement or not, but then I know the company officials were **[116]** all upstairs in the offices and they sent down to Mr. Schwartz and Mr. Sammartino to come up first.

Then when they came back downstairs they confronted us with something on this order, "Look, the company wants to save face in front of the other men. They have agreed to put you back to work and they will file a grievance against yous in Detroit."

Q. So the company will file a grievance? A. That's right, so the company will file a grievance against us, and would this be acceptable. They said this is about the same as during the strike, because the company took a stand similar to this during the strike, that they would file a grievance against us in Detroit, which never came about.

They said the company is wanting to save face in front of the rest of the men, so he says, "You don't have nothing to worry about. They can't fire you," and we more or less went along with them on their advice.

Q. You went back to work? A. That's correct.

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[117] Q. So if I understand you correctly, from the time that the union guys first arrived on the scene until the time they finally said, "You can go back to work," and they will file a grievance against you, somewhere

around eight hours elapsed? A. Around 3:00 in the afternoon. When I say it involved eight hours, I think I was on dispatch somewhere between 7:00 and 8:00, and this was around 3:00 in the afternoon.

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[118] Mr. Angelo was on vacation and I talked to Mr. Schwartz several times, and then when Mr. Angelo came back off vacation, myself, Mr. Croft, Mr. Mariano went to the union hall to talk to Mr. Angelo about it, and at that time he says, "You don't have nothing to worry about. There is no way they can fire you because we want to find out what we needed to do. If we needed evidence we wanted to get an attorney and go see the motel in Batavia and so forth, and you don't have a damn thing to worry about, there is no way they can fire you, and let him take care of it."

Q. Did he say why he was so optimistic? Did he say why he was so sure you were going to win? A. He says, "You have got nothing to worry about, I'll take care of it. There is no way they can fire you."

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[119] Q. What explanation was there for the difference between the moneys on the receipt and the money on the registration card? **[120]** A. We could only presume that the clerk—I can't say it was the clerk or owner, because I only stayed there twice and only saw the man one time. We presumed that somebody was knocking down on the motel or knocking down on the income tax, we don't know.

Q. But it is fair to say you agreed that was the explanation you were going to present to the Panel? A. Yes, that was what Angelo said also.

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[121] Q. Did he make an argument of any kind as to how that added up? A. He based it on the amount that was written down in the corner on the registration card, and the best I can recall, it was even different handwriting than from our receipts. That is what he based his argument on, that we had presented this receipt to the company for reimbursement and, therefore, we were dishonest in doing so.

Q. What argument did Angelo make? **[122]** A. Mr. Angelo denied the charge. He said it looked to him like the clerk, or whoever wrote the receipt out, was probably pocketing the money. Also I think him and I both made the statement that those statements from Mr. Repucci was not notarized. Of course, at that time I think we are both familiar with the seal in Ohio that happens to be on there, and New York State would have to have that, so outside of that that is about all.

Q. But he pointed that out? A. Yes, I pointed it out to him and I think in return he pointed it out to the company.

Q. Then you made an argument at that meeting? A. I just stated the fact that I had stayed there, I didn't deny that. I filled out the registration card, asked the man how much I owed him and I paid that amount of money and got my receipt and that was it.

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[123] A. I think I did once before, because I went up there on a discharge case. I got discharged from there prior to this.

Q. When was that? A. This was in December of '66. I had worked 17 days without a day off. I had worked 25 days with one day off, and I came in after being on duty 19 3/4 hours without a legal eight-hour break about 2:00 a. m. in the morning and they says, "You have to go back to work."

I said, "I'm too tired. I'll take my 10 hours' rest and come back and go to work." And I said, "Besides, our national contract says we don't have to go out between 12:00 and 5:00 a. m." I stood my ground on it.

I was discharged and lost thirty-some days of work. **[124]** They went to the Panel. I had to present my own case. John Angelo and Abe Schwartz sat beside me and never once opened their mouth.

Q. And you won? A. I won in a sense. I got back to work with no back pay.

Q. When was that in time? You told me, I just couldn't remember. A. It was December, either the 23rd or 24th I got fired just before Christmas and it became official the 27th of December.

Q. 1966? A. 1966, and I went back to work January 30, 1967.

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[125] A. * * * We went ahead with the attorney in getting the affidavit from the motel. I think we got that about five, 10 days prior to our second hearing.

Q. You attended that second hearing? A. Oh, yes.

Q. Did Mr. Angelo have a copy of the Repucci deposition prior to that hearing that Racklyn obtained? A. No, because I don't think we even had a copy of that until our attorney flew into Detroit, and we met him at the airport and went directly to the meeting and as soon as we saw Mr. Angelo we gave him a copy.

Q. Do you know whether Angelo left a copy of that deposition with the Panel? A. I think so. I know he had several copies. I know the Panel had one there for a while and I know it was passed around. Whether they kept one or not, I can't recall.

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[126] I said, "How could it be old evidence when it was only signed five or 10 days prior to going to the hearing."

So the Panel took it under advisement, and all of us we are under the impression that we have got a new hearing.

We come back in and they had ruled we don't have new evidence for a new hearing.

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[127] Q. How did 377 let you down in the investigation stage? A. 377 let us down from the day we went to work.

Q. Specifically how in the investigation? A. They did nothing really. Like I told you before, John Angelo, Abe Schwartz, Sammartino said, "Don't do nothing. You don't have to do nothing. There's no way they can fire you." He said not to do anything like we suggested to him, like contact the motel owner, talking to an attorney. I asked them to get Mr. Green to go with us or something like that.

Q. What did he say about that? A. No need. He says, "You don't need it. They can't fire you. There is nothing they can do. Go on and forget it. You have got nothing to worry about."

Q. In respect to whether Mr. Green would represent you, **[128]** he said there was no need. Didn't he also say the Panel doesn't accept presentations by lawyers, even lawyers for the union? A. Wait a minute. By that I didn't say Mr. Green to go to the Panel, but to go with us and confront the motel owner. We were just making suggestions and everything we suggested there was just no need in it. He says, "There is nothing they can do to you. They can't fire you. They don't have a leg to stand on. Forget it. You've got nothing to worry about." That's what we were being assured of.

Q. Okay. How did the International Union not give you fair representation in the enforcement of your rights? A. Like I say, from the day I went to work there we got no representation from 377, and as time progressed things would keep getting worse. It never got better, it got worse. We contacted Mr. Tabor and we tried to contact Mr. Fitzsimmons, which we were never able to do. We were supposed to have an appointment with Mr. Fitzsimmons, which was never kept. We just couldn't get no representation from the International or from anyone else. At the time we got fired prior to the first and second hearing I personally wrote a letter to Mr. Preser. I **[129]** got a reply, "I'm sorry, there is nothing I can do."

Regardless of all we done nobody would help. Nobody would do anything until we went on a wildcat strike. Then we got a little bit of representation.

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[130] Q. How did 377 discriminate against you in the handling of your discharge? A. By no representation. I personally feel there was a collusion between them and the company.

Q. Based on what facts? A. Based on the fact that during the trial in the negotiation, which is a matter of court record, Eugene Babbish, the terminal manager, said that he gave John Angelo one of the company cars to drive. He was also involved in an accident in Youngstown, which was admitted under oath.

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[132] Q. You weren't surprised when they started going into the merits of your grievance, were you? A. No, I wasn't surprised.

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Deposition Testimony of Anthony Pagano

[133] Q. Mr. Pagano, I'm going to show you certain documents that are copies of registration cards and receipts from the Towne Manor Motel and showing you what has been marked as Exhibit C-1, are you able to identify the signature on the receipts? A. That looks like my handwriting.

Q. Your handwriting? What part looks like your handwriting? A. Well, the whole thing. That's the way I sign it 'cause I'm a bad handwriting. I didn't have no—much education.

Q. You signed "J.D. Repicci" at the bottom there? A. Right, right.

Q. And did you sign "J.D. Repicci" on the other receipt here? A. Right.

Q. Do you recognize your handwriting? A. Right.

Q. Do you remember whether you signed any other parts of this? A. It looks like my—all my handwriting.

Q. Referring to the—to the receipt portion of the card— **[134]** A. Well, that's—that's—see, that's where you get me here. Sometimes I don't sign the name because some of these guys, when they write, I can't spell it. I let them sign it because we're signing—if I sign they sign and that doesn't mean nothing so they could have signed it or I could have signed it.

Q. But do you know that that's your signature, "J.D. Repicci"? A. Yes. And this here I don't think is my writing. This could be mine because lots of times I get a name I could—I print it, I don't know, it might not be mine. That "B" don't look like mine. I don't make a "B" that way.

Q. Does Mr. Repicci authorize you to sign his name? A. Well, I've been doing it, he hasn't said nothing.

Q. Why do you sign his name rather than yours? A. Well, I figure I've got my name on that I'm an em-

ployee. If I'm an employee it's going to be different than I figure I sign my name.

Q. Showing you what has been marked as Plaintiff's Exhibit C-4, are you able to identify the handwriting of the signature of "J.D. Repicci" on there? [135] A. Yeah, that's mine.

Q. All right. On both of them? A. Yeah. I want to see something else.

Q. On both receipts? A. Right, they're both my handwriting.

Q. I'm going to show you what has been marked as Plaintiff's Exhibit C-5, are you able to identify the handwriting on the receipts? A. Yeah, that's all—that's all mine.

Q. The receipts there, the signatures are all yours? A. Yes.

Q. Do you know whether or not the rest of the receipts A. This looks like mine. That would be my "B", the way I make it. That looks like—I don't know if that looks like mine or not but that "B", that's the way I do it.

Q. Showing you what has been marked as Plaintiff's Exhibit C-6, are you able to identify the handwriting of "J.D. Repicci" as it appears on those receipts? A. That's all my handwriting. I'm looking at this other names now, so—that ain't mine. I don't make a "B" like that.

[136] Mr. Loeffler: Tell us what he's indicating.

The Witness: That could be mine.

By Mr. Schwartz:

Q. Pointing to a name, "Burt Hines", as that which he doesn't make a "B" like. Showing you what has been marked Plaintiff's Exhibit C-7— A. Yeah.

Q. Are you able to identify— A. They're both mine.

Q. The signatures on the receipts there? A. Yeah, that's the way I write his name.

Q. All right. And is the same true for Exhibit C-8? A. Yeah.

Q. And is the "J.D. Repicci", as it appears on the— A. That's—that's mine too.

Q. —receipts on C-9, yours? A. Yeah.

Q. Now does that mean that you were the one who checked in these people on these dates? A. Right.

Q. All right. Now Mr. Pagano, showing you what has been marked as Plaintiff's Exhibit C-4— A. What do you mean—"showing"?

[137] Q. I'm showing you this piece of paper. A. Right.

Q. Just for purposes of the record I am indicating it as C-4. A. Okay, okay.

Q. So people reading the transcript will know which page we are talking about. A. Okay, okay.

Q. You note that the registration card shows "Carlos Fugett and L. Worley"? A. Yeah.

Q. And that is shows the amount paid to be $12.48? A. That's what I put on the card.

Q. All right. Now looking at the receipts, there's one for "L. Worley" for $8.32 and another for "Carlos Fugett" for $8.32? A. Right.

Q. All of those being for the night of May 10th— A. Right.

Q. 1967. A. Right.

Q. Are you able to explain why the receipts total $16.64 but the registration card shows only $12.48 [138] received? A. Sure.

Q. What's the reason for that? A. I pocketed the other $4. myself and didn't mark it down here. Joe Repicci gets $12. to him, I charge him $8. apiece, what they pay for single, and I mark it here, I mark it $12.48 so I'm pocketing four bucks.

Q. Now showing you what has been marked as Plaintiff's Exhibit C-1,— A. Right.

Q. Are you able to explain the explanation for why the receipts— A. Seven—

Q. Total $14.56 and the registration card shows only $10.40? A. I pocket $4. and something more.

Q. Now is that the same explanation for the difference between the receipts and the registration card— A. Right.

Q. —on Exhibit C-5? A. Right.

Q. And is that the same explanation for the discrepancy **[139]** between the exhibits—excuse me—between the receipts and registration card on Exhibit C-6? A. Right.

Q. And is that the same explanation for the difference between the receipts and registration card on Exhibit C-7? A. Right.

Q. Showing you what has been marked as Plaintiff's Exhibit C-8, what is the explanation for the fact that the registration card with the names "cartwright" and "Fitzpatrick" on it show $10.40 paid while the receipts for each of those men totals $16.64? A. I pocket that too.

Q. And showing you what has been marked as Plaintiff's Exhibit C-9, what is the explanation for the difference between the receipts and the registration card? A. That's what I pocket. When they're double rooms I pocket that and when there's a single room I don't pocket because that's what the singles are. I—I can't make nothing.

* * * * *

[140] Q. Is there any reason why you did not tell the man from Anchorway the real reason for the difference between the receipts and— A. Well—

Q. —the; let me finish the question. The real reason for the difference between the receipts and the registration card? A. Well, the way it happened so fast, I had no time to think and I figure, here I—I'm hooking money out of this deal. I know Joe don't care but there's going to be something wrong with those fees so I didn't say nothing to him at the time. There's a guy got—

Q. That was true even though you knew that the— A. Right.

Q. That the information on here was false? A. Because this guy, whoever he was, got a little too smart with me. If he'd a did it gentleman way I probably would have told him. And I kept telling him, "Right. You're right."

* * * * *

[142] Q. Right, okay. The questions is, and you swore under—did you swear under oath before the notary? A. Right.

Q. That this information was true, even though you knew that the men had paid more than you wrote down here? A. Right.

* * * * *

[143] Q. Did you ever—did you ever tell anyone from Anchor what the real reason was for the difference in the cards? A. I told a lawyer.

Q. You told a lawyer for Anchor? A. Yeah.

Q. When was that? A. Oh, I don't know, three years ago. You want me to tell you the whole story or just answer your question?

[144] Q. Just answer my question. Where was that when you told him? A. Cleveland.

Q. How did you get to Cleveland? A. Well, they told Joe to go and Joe says, "Why don't you go. That's your name down there." So I—I went in his place.

Q. How did you get to Cleveland? A. They sent an air ticket.

Q. Who did? A. Must have been Anchorways.

Q. How did you know it was Anchorways? A. Well, I actually didn't know until I got there.

Q. And what happened when you got there? A. Well I got in in—

Mr. Goldfarb: Fix the time, will you?

By Mr. Schwartz:

Q. Do you recall when this was? A. No, I can't remember the date, that's too far gone.

Q. I think you said earlier it was approximately three years ago? A. Could have been four, three, I'm just guessing now. I know it's a long time ago.

[145] Q. All right. What happened when you got to Cleveland? A. Well, the guy, the lawyer, picked me up at the airport and sent me up at a Holiday Inn.

Q. Was there anybody else with the lawyer? A. Not at that day.

Q. Do you remember the lawyer's name?

Mr. Goldfarb: He's shaking his head. I would like to be able to get audible answers.

The Witness: No, I don't remember the lawyer's name but I could remember what he looks like.

By Mr. Schwartz:

Q. What did he look like? A. Short fellow, little grey hair and he told me he was in the F.B.I. before he got to be—he turned out a lawyer. I mean the guy was a beautiful guy, so in the room he asked me a lot of questions.

Q. Was there anybody with him when he asked you these questions? A. No.

Q. And what questions did he ask you? A. He asked me about these cards and I told him the **[146]**

way I'm telling you, that the driver's paid $8. but I fooled around with the cards and kept the extra.

Q. Did he say why he had wanted you to come to Cleveland? A. As far as I know I don't think he told me anything why they had me there. They're supposed to have Joe but I went in Joe's place.

Q. Did you know what—were you told what you were supposed to do when you got there? A. No. Well now, wait a minute. I—he could have told me and I don't remember because—because the next day we went to—I always thought it was Youngstown, to a town—now I don't know—now I thought it was Youngstown, that's what he said but when we got there, well, I was supposed to go to court and I never went. I just sat in the car with an Anchorway man.

Q. Not the lawyer? A. No, the lawyer went in, in the courthouse.

Q. I see. Do you know what he was going in there for? A. No.

Q. Did they tell you then why you—why they wanted **[147]** you? A. Well, when he come out he said, "Well, everything's okay. We don't need you." I said, "Is this all settled now?" He said, "Yeah, you can go home." In fact, he wanted me to stay and I told him, "No, I'd rather get home."

Q. This is the lawyer you're talking about now? A. The lawyer.

Q. And there was another man? A. Another guy with him.

Q. From— A. To me he looked like an Anchorway man because I asked him, "Who's that guy?", and he mentioned his title, I don't know.

Q. Do you know what the title was? A. What do you call these fellows that's in charge of company—

regional director or something. I didn't have a name for that.

Q. Do you remember what this other man looked like? A. Well, he's a short fellow, a little stouter than the lawyer.

Q. Do you remember whether or not he was bald? A. No, I couldn't remember that.

[148] Q. Do you remember whether or not he wore glasses? A. He might have wore glasses.

Q. Well after they told you that they didn't need you, what did they do with you? A. Well, this lawyer says, "Instead of driving you back to Cleveland, putting you on American Airlines," that's what I flew, he said, "They've decided there was an airport there—", and I thought it was Eastern. So they got—brought me to this airport and we go and get in there and find out if a plane's going to Buffalo and the guy says "There's one going out of here in a half hour.", and they bought me a ticket to that plane.

Q. Do you know what airport that was? A. No, I wouldn't know the name of the airport.

Q. It wasn't the Cleveland airport? A. Not the big one, this was just a small airport.

Q. Okay. Do you remember about how far from Cleveland this place was that they took you to? A. Well, I don't—to me—because this lawyer says, "We only got to go about 30, 35 miles."

Q. Why did you tell the lawyer and the man from Anchor the real reason when they brought you to **[149]** Cleveland? A. Because I figure if I start lieing now I'm dead. I'm a dead duck. So I might as well tell the truth, even if I go to jail.

Q. Go to jail for having lied before you mean? A. Well, yeah, whatever. What do I know? Whatever

they do you. I figure there's no use lieing anymore and I told them the truth and I kept telling them that.

* * * * *

[150] Q. Do you know whether or not any of the other motels in the area do that? A. Well I don't know. According to my idea, I think they're all doing it.

* * * * *

[151] Q. So wherever there's a conflict between the room as appears on the registration card and the room that appears where the guy spent the night, that was your decision to change those numbers? A. Right.

Q. Okay. **[152]** A. I don't know what made me do it but I did it.

Q. Okay. Did any of the drivers note that? A. I don't think so. They couldn't have because any drivers not interested in what's here, he's interested what's here, he's interested in the guest receipt because he's paying me cash and he's interested in that, not that, so they might have missed it too.

Q. Would the drivers frequently fill in their own names on the receipts? A. Sometimes they do. Like I tell you, when I can't spell their name I say, "Here, you write your name on it."

Q. Okay. Now looking through these, it is your view that you didn't write "Vincent Mariano" in C-1, right? A. Well, no. See, the way I see that Vincent might have wrote his own name.

Q. What about "B. Hines"? A. "B. Hines", that I can't tell if it's my handwriting or not because that ain't my "B".

* * * * *

[153] Q. Did you read it over at all? A. I read it over but I don't think I understood it and I signed it 'cause I kept telling him the receipts are right.

Q. Now did he say, "Unless you do this we'll put—Anchor will put the motel off limits."? A. No, he didn't mention nothing about me, he says, * * *.

* * * * *

[154] Q. Now when did you get the airplane ride to Cleveland? When in time—a month? A. I don't remember now how many years later it was I went. I'm in the motel one day and Joe says, "They sent me a ticket, Anchorway, I got to go down." He says, "Why don't you go down. That's your name on them cards." I said, "Okay, I'll go for you."

* * * * *

[155] Q. I understand. What I want to know is, you know that Joe made some statements before a notary public, **[156]** signed statements, are you aware of that? A. No.

Q. That Joe made some statements and signed—A. I know he made some statement but I never read it.

Q. I know. But you know he made some statement? A. Yeah.

Q. Did Joe know the truth when he made those statements? A. I—I don't know if he did or not.

Q. Who else knew the truth besides Joe? A. That's all, that's all.

Q. That's all? A. Yes.

Q. Did you ever sign any statements other than this one that you signed on May 31, 1967? A. You mean a statement for something like that?

Q. Yes. Did you ever sign anything else? A. No. In Cleveland there that lawyer in the car * * *.

* * * * *

[157] Q. All right. Now, is that the second time you told the truth or did somebody else know the truth? A. Well, you mean that I told this lawyer?

Q. Yes. A. Well, I had told Joe already so that—

Q. You already told Joe? A. That would have been the second time.

Q. When you told the lawyer, that's the second time? A. Right.

Q. When did you tell Rachlin that you were skimming? A. Who's Rachlin?

Q. The lawyer for the men; were you—were you answering? A. I don't know when—I'm trying to think who you're talking about—Rachlin.

Mr. Schwartz: I think he's getting confused.

[158] The Witness: I told a lawyer here about three weeks ago, whoever he was.

By Mr. Goldfarb:

Q. Did you tell anybody else? Is that the third person you told? A. Right.

Q. Did you ever tell anybody else? A. No.

* * * * *

Q. Did anybody from Anchor force you to tell anything other than the truth? A. No. I did this all on my own.

Q. This was all on your own? A. Right.

Q. All the way from the beginning to now? A. Right.

* * * * *

Deposition Testimony of Walter J. Shea

[168] Q. Would you take a look at Article VII, Section 10?

Suppose the Joint Area Committee gets a majority on a given grievance.

What happens? A. The matter is settled.

Q. And there is no procedure for review if the Joint Area Committee decides by a majority vote, there is no review of that decision? A. I think the charter spells that out. Any decision of any committee is final and binding.

* * * * *

Deposition Testimony of Joseph D. Repicci

* * * * *

[174] Q. What is the procedure for registering guests when they come into your motel? A. Well, they ask for a certain type of room, whether it's a single or a double and they ask for the price. I quote them the price, if they want it **[175]** I'll sign them in, that is it.

Q. And do you have them sign anything? A. Yes sir, they sign all the—all the cards.

Q. What do they sign? A. Well, there's a large—it's two, two cards—it's a—well, there's a stub attached with a large card, they sign the large card.

Q. And the stub attached is what? A. I fill in that myself.

Q. I see. What is that stub attached? A. Well, that's the receipt.

Q. And you fill that in yourself? A. Yes.

Q. Then you give it to— A. That's right.

Q. —the guest? A. Yes.

Q. Have you worked as the registration clerk ever since you acquired ownership of the motel? A. Yes.

Q. Do you have other people performing that function? A. No.

Q. When you're not there? **[176]** A. Just my brother-in-law, he helps me out when I'm not there.

Q. Your brother-in-law helps you out when you're not there? What is your brother-in-law's name? A. Tony Pagano.

Q. How do you spell that? A. P-a-g-a-n-o. He's retired, pensioned and disabled.

* * * * *

[178] Q. Did anyone ever ask you to give a statement about **[179]** this matter? A. Well, I know we—we—there was a statement at one time that they had me read and sign but I guess you have that there.

Q. Who was it, who had you read and sign it? A. Some representative of—whether it's Anchor or whether it was for the union, I don't know who the fellow was. I'm a very—I can't remember names and I don't know who it was.

Q. All right. I am going to show you what has been previously marked as Plaintiff's Exhibit F-1 and ask you if you can identify what that is.

Mr. Goldfarb: Which one now?

Mr. Schwartz: F-1.

Mr. Loeffler: F-1.

Mr. Schwartz: F-1?

Mr. Loeffler: June 5th statement.

The Witness: Well, I remember signing this but I don't quite remember this stuff about two separate inflated receipts, whether that—I don't remember that statement there at all.

By Mr. Schwartz:

[180] Q. Was that a statement that you signed? A. I think this is what I signed, yes. But I don't remember reading that. Maybe I remembered at the time but I can't remember it right now if that was it or not.

Q. All right. And at whose request did you sign this statement? A. Some fellow that came down

wanted—he wrote that out or he asked me questions and he wrote that out and I signed it. That's it. I don't know who the fellow was, I really can't remember.

Q. All right. I am going to show you what has been previously marked as Plaintiff's Exhibit F-2 and ask you if that was also a statement which you signed at the request of someone else? A. Well, I signed that, it's my signature but I don't remember that.

Q. Okay, but that is your signature? A. That's my signature.

Q. Okay. I am going to show you what has been previously marked as Plaintiff's Exhibit F-3 and ask you if you have—if you can identify that document? **[181]** A. I don't remember that. I signed it but I don't remember that.

Q. But that is your signature? A. It's my signature.

Q. You don't deny having signed that, you just don't remember? A. No, I don't deny I signed that, it's my signature but I don't remember what that phrase that you have there, that sentence.

Q. All right. Now were these signed at the same—at the request of the same person? A. I believe it was. I don't know, I don't remember.

Q. Now when you signed this statement that has been marked as F-1, did you have any personal recollection of having registered the drivers referred to in that statement? A. Well, that's my signature but what they say here was said, the fact my brother-in-law known at the time, he told me a lot of things which I don't really understand what he meant by that. Evidently what he said, these fellows agreed to—to write down and I agreed to say—to sign my signature to it because I took my brother-in-law's **[182]** word for everything. But a lot of those fellows I don't even know. I never seen them.

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[183] Q. I am going to show you what has previously been marked as Plaintiff's Exhibit C-1, and ask you if that is your signature on the cards— A. Nope.

Q. —at the top? A. That is not my signature.

Q. Neither one of those is your signature? A. No sir.

Q. Do you recognize the signature—

Mr. Goldfarb: Wait till we catch up with you. Who are the names on there?

Mr. Loeffler: Mariano and Hines.

Mr. Goldfarb: Okay, go ahead.

[184] By Mr. Schwartz:

Q. Do you recognize the signature as any signature you have seen before? A. My brother-in-law's, that's his signature, I know that.

Q. That is your brother-in-law's signature? A. Yes.

Q. Of your name? A. Yes.

Q. Have you authorized your brother-in-law to sign your name? A. Well, he doesn't get paid for that. He helps me out when I'm working on construction or building a house, he helps me out and he doesn't get paid for it so he has authority to sign my name on things like that because they don't mean a thing, it's not important.

Q. You have given him authority— A. Oh yes.

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[185] Q. Now the fact that all of the signatures on the receipts on the exhibits I have asked you about have been identified by you as your brother-in-law's signature, does that—does that mean anything as to which of you was the registration clerk at the time the guests in question checked in? A. It's positive proof that he's the registration clerk.

Q. Would you have been present then at the time any of these cards were filled out? A. No because I—I work pretty late. I get to the office maybe about 8:00,

8:15, 8:30 some nights and these truckers usually get there early. I don't know what time they get there.

Q. Do you now or did you ever have any personal [186] knowledge as to how much any of these men paid for the night in question on those cards?

Mr. Goldfarb: I am going to object to that question on the basis that the documents are self-serving. If you want to impeach the document you've got to lay a foundation for them.

Mr. Schwartz: The documents are self-serving?

Mr. Goldfarb: Yes. You're questioning him from receipts as to the amounts as to how much the men paid. The amounts are on there.

Mr. Schwartz: I'm not asking him how much they in fact paid, I'm asking him whether or not he had or has any personal knowledge as to how much they in fact paid.

The Witness: No, I don't.

By Mr. Schwartz:

Q. Do you have any personal knowledge as to who signed any of the registration cards? A. No, I don't.

Q. On the exhibits I showed you? [187] A. I don't know who signed them.

Q. Now when you signed Exhibit F-2, the statement pertaining to Mr. Mariano and Mr. Hines for the evening of April 14, 1967, could your signature of that statement have been based on your personal knowledge as to how much they paid? A. No, I just signed it because I—I took my brother-in-law's word or whoever it was there that they said those things were—I based my—my answer in what I saw here and that's why I signed that.

Mr. Loeffler: What you "saw here", indicating—

The Witness: Those receipts.

Mr. Loeffler: Receipts and registration cards.

The Witness: That's why I signed it. I don't know, I wasn't there and I don't understand anything of the sort.

By Mr. Schwartz:

Q. Now when you signed Exhibit F-3, could your signature on that statement have been based on your own personal knowledge— A. No.

Q. —of how much they paid? [188] A. I have nothing—when—according to those stubs there, that's all I went by. I don't know, who they are, never seen them or nothing of the sort. I went according to those stubs.

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[189] Q. Did anyone from the Anchor Motor Freight Company ever come back to discuss the matter with you again since 1967? A. No.

Q. Do you know whether or not anyone from that company ever came back to discuss the matter with your brother-in-law since 1967? A. I don't think so, no.

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[190] Q. Now I want you to take a look at F-4; did you sign that? A. I signed that, yes sir.

Q. Now when you—did you sign that after you yourself had physically inspected registration cards and receipts? A. Well, I signed that after all this stupid information that they showed me there and I didn't know [191] what was going on and I saw that and I figured, well, what's there is right so I signed it, yes.

Q. The "stupid information" was registration cards and receipts? A. That's right.

Q. Was it the originals? A. They—those are the originals, yes.

Q. But were they on copies like this or— A. At the time, I don't remember, sir. I can't tell you.

Q. You don't know whether it was on copies or whether it was your raw records? A. I don't remember, I don't remember.

Q. Who presented those to you? A. One fellow, either he was from the union or from Anchor, I have no idea. It was one of the fellows, there was two, three of them at the time and I don't know who they are.

Q. Was he kind of a burly guy, big guy? A. I think he might have been one of them.

Q. Was his name Andy? A. I can't recall.

Q. Was he a balding man? [192] A. It's four years, I don't remember. I got a bad memory, I can't remember. Honestly, I can't. But I know they showed me a lot of

these things and I of course, I said, "Yes, they're the true receipts." And that's what I signed that for.

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[193] Q. "—that the information notorized has been with my knowledge compiled by Anthony Pagano—"

Mr. Schwartz: Let the record show it says, "complied".

Mr. Loeffler: "—complied (sic) by Anthony Pagano and myself, is correct."

The Witness: When I was in there, what I understood, everything my brother-in-law **[194]** was telling me and took it for granted he was telling the right thing. That's why I put my name to everything he said.

By Mr. Loeffler:

Q. All right, all right. A. I wasn't—any of these, I never took any of these fellows in, I just took his word for that. That's all I—that's why I signed it. I took his word for everything. In fact, I wasn't even there.

Q. Now did Sandy or anybody from Anchor say, "Unless you sign those things we're going to put you in jail."? A. No, not that I know of, no.

Q. Did they threaten you with anything? A. No.

Q. Did they say, "We're going to put your motel off limits."? A. No, didn't say nothing, not that I know of.

Q. They never threatened you with economic reprisals? A. Nothing, no.

Q. They never threatened you with criminal prosecution? **[195]** A. No, no.

Q. And you signed all those statements? A. I took my brother-in-law's word for everything and I said, "Well, whatever there is done, I guess, and I signed accordingly.

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[196] Q. I have just a few questions to ask you. You saw those motel receipts and registration cards on the exhibits, those are legitimate, valid motel receipts and registration cards from your motel? A. That's right, sir.

Q. Is that correct? A. Yes, sir.

Q. And the records you talk about as being taken by somebody, you mean the registration cards that you see there now, is that correct? A. Not the small ones, the big ones.

Q. The big ones? A. Yes.

Q. The big ones. When you talk about the big card— **[197]** A. Yes.

Q. Yes. You mean the registration card? A. They're the ones that keep the tally on.

Q. They're the ones that keep the tally, those are the cards, the records you're talking about? A. Yes.

Q. When you talk about the small ones you mean the receipts? A. Receipts, right.

Q. Right. Now the receipts are passed out to the guests? A. Yes.

Q. And no copy is maintained at the motel? A. No sir.

Q. Is that correct? A. That's right.

Q. So the only record you have of the amount charged for the room is on the—what you call the "big card"? A. That's right, sir.

Q. The registration card? A. Yes, sir.

Q. And that's the amount that you report in your **[198]** gross receipts? A. That's exactly right, sir.

Q. And that's the amount that you use for tax purposes? A. That's right.

Q. And other taxes and everything else? A. Yes. sir.

Q. Is that correct? A. Yes.

Q. So there's no misunderstanding as to what we are talking about, the records, the small cards and the big cards are legitimate records? A. Yes, sir.

Q. And they are accurate on the face, is that correct? A. What I see there, they're—they're—

Q. They're accurate? A. They're accurate but I didn't sign any of these fellows—

Q. I didn't ask you that. On the face of the records— A. Yes.

Q. They are accurate, is that correct?

* * * * *

Q. That's what I want. Now, let's go back to your statements that you made before a notary public back in June of 1967, you made one, two, three statements. They are identified as F-2, F-1, F-2 and F-3, and you made a statement on May 31, 1967. You had no reason to make any misstatements in those statements, am I correct? You had no reason to say anything that was out of the way? **[199]** A. Well, a lot of those statements are—

Q. Just answer my question and we'll be done. A. No.

Q. You had no reason to, is that correct? A. No. No, why should I?

Q. Am I correct? So when you made those statements, regardless of the source of your information, regardless when you made these statements and you signed them in front of a notary public, you made the statements that you understood to be true, isn't that correct? A. At the time I thought it was true.

* * * * *

[200] Q. Remember sir? All right, in October of 1967 when he took that statement from you did you have all these records that we looked at here today available

to you? In October of '67? The receipts and the registration cards? A. I can't remember sir, I can't remember.

Q. You can't remember? A. I can't remember sir, I can't remember. I'm sorry.

Q. Did you have them available to you when the statements in January and May 31 of 1967 were taken? Did you examine them and talk to your brother-in-law? A. I don't remember that either.

Q. You don't remember that either? A. I don't remember that either, no. I don't. Honestly, I can't remember that either, sir.

* * * * *

Deposition Testimony of Graydon H. Croft, Jr.

* * * * *

[201] Q. Prior to your discharge you were a committeeman? A. Correct.

Q. And were you elected to that position? **[202]** A. Yes.

Q. By whom? A. By the employees of Anchor Motor Freight.

Q. Located at which terminals? A. Lordstown.

Q. So to your knowledge does Anchor have employees at other towns? A. Yes.

Q. And it was only the Lordstown guys that voted on you? A. Yes.

Q. Now, what was your job as a committeeman? First of all, when did you get to be a committeeman? When in time? A. In August of 1966.

Q. What were your jobs as committeeman? A. There was no defined specific job, just to take grievances, go in and try to work out some of the differences in

dispatching, whatever was going wrong with the terminal there as far as the employees were concerned.

Q. If one of the workers had a problem he would come to you with it? A. If the steward was not there.

* * * * *

Q. What happened at that meeting? A. The motel receipts were shown to us, plus the registration cards and a letter from the owner of the motel.

Q. Do you remember his name? A. If I heard it I would.

Q. Repucci? A. Yes.

Q. Did the company then offer some explanation to Sammartino and Schwartz and the others as to what they thought you had done wrong? A. Yes.

Q. What was that? Who relayed that explanation? A. I believe it was Dan Sandy, but I'm not positive.

Q. What did he say? A. That there was a different amount, it didn't correspond with the receipt that we had turned in, and the amount on the registration card.

Q. Did he say that the figures on the receipt were **[203]** different than the figures on the registration cards? A. Yes.

Q. In what respect were they different? A. The receipt that we turned in was for more than what was written on the registration card.

Q. What else did he say? A. Basically that we would be discharged for it, for stealing.

Q. What was the response of Schwartz and Sammartino at that time? A. At that time they said that they had no case.

Q. That the company had no case? A. That's right.

Q. What else did they say? A. That's just about it.

Q. Did they say, "We are going to fight this all the way," or something like that or what? A. Well, as they talked back and forth the company wanted to take it—they couldn't come to an agreement at the meeting. The company had the idea of going to the Panel in Detroit and getting a decision there.

Q. Did the company also agree to put you back on the job? A. Yes.

Q. Was that at the request of Schwartz and/or Sammartino? **[204]** A. The committee, and talking to Schwartz and Sammartino.

Q. But it is fair to say that Schwartz and Sammartino took the position that you guys ought to get back on pending the outcome? A. That's right.

Q. What explanation did you offer during that time as to the meaning of those receipts and registration cards? A. I told them I paid what was written on that card and the registration card, I have no control over what the man writes on it. I only put down my name, the company I work for and maybe my home address or company address.

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[205] Q. After that morning and before the hearing day did you talk to any officer of 377 about your case? A. Yes, I did.

Q. Who? A. John Angelo.

Q. What did you say to him and what did he say to you? A. I asked him what could be done about our case. He said I had nothing to worry about.

Q. Did you request that he take certain steps? **[206]** A. Yes, I did.

Q. What steps? A. I asked if we could have a lawyer present with us and he told me at that time that lawyers are not welcomed in the hearing at Detroit. I also asked that the lawyer for the Teamsters go with us

and he said there was no need for this. We also asked him about going to the operator of the motel to see what we could do there, and he said it was a waste of time and money.

Q. What did you ask him to do with respect to the motel? A. We asked him if there was some way of investigating it.

Q. What were his words as closely as you can remember? A. There was no need for it.

Q. Did he say why there was no need? A. He said we didn't have anything to worry about, we would be back to work.

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[207] Q. Where was this hearing held? A. In Detroit.

Q. Do you remember where? Was it some hotel? A. I think it was the Pick Hotel or some such place as that.

Q. Now, what was the setup when you came into that room? A. We come in and we waited as other cases were being heard and they finally come out and told us we are ready to go in for our hearing.

Q. Who went in? A. All the gentlemen who were there that went up, all the drivers and John Angelo and Abe Schwartz.

Q. Who were your judges? A. On the Panel?

Q. Yes. A. I don't know.

Q. Well, were they introduced? A. Yes, I believe they were.

Q. How were they identified? A. I couldn't recall at this time how they were identified.

Q. Weren't some of them identified— A. Some were company men.

[208] Q. Who were the others? A. Union representatives.

Q. Of which unions? A. I don't know which unions.

Q. They were representatives of other local unions? A. Yes.

Q. And there was an equal number of company guys and union guys? A. Yes.

Q. On the Panel? A. Yes, that's what we were told, yes.

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[209] Q. Did Anchor present any documentary evidence to that Panel? A. The same evidence that was presented at Youngstown.

Q. Tell us what that was again. A. The motel receipt, registration card and a letter, one or two letters by the owner, Repucci or whatever his name was.

Q. Did members of the Panel examine him about that information, to your recollection; ask him questions? A. I don't know if they asked him any questions or not. He just presented his evidence.

Q. Then who spoke up for you first? A. Mr. Angelo.

[210] Q. Tell us as closely as you can remember what words he spoke to the Panel. A. We told him we had a bona fide receipt, that we didn't take any money or anything. The conversation was not very long.

Q. How long did he speak? A. Ten minutes.

Q. Did Schwartz speak? A. No.

Q. Then each of the men who wanted to give their version did so? A. Yes.

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[211] Q. So you said to the Panel, "I in fact paid the money that appears on the receipt"? A. That's right.

Q. Did you say anything to the Panel about the registration card? A. Only that I had signed it, put my name and address and the company I work for on it.

Q. Did you offer to the Panel an explanation as to why the sums on the registration card should be different than those on the receipts? A. No, I did not.

Q. Did you have an opportunity to say all that you had to say that day? A. Yes.

* * * * *

Q. There was another meeting in Detroit? A. Yes.

* * * * *

Q. And was that meeting at the same hotel, the Pick Shelby where the first meeting was held? A. Yes.

Q. And the setup was the same, there was a Panel with equal representatives of the employers and equal representatives of the union? A. Yes.

Q. Was it the same person? A. I couldn't say if it was or not.

Q. What happened? Who spoke first? A. I believe this time John Angelo spoke first.

Q. What did he say? A. We had a deposition from New York, from the motel owner.

Q. Repucci? A. Yes. And Mr. Angelo read from that, and Mr. Dan Sandy objected and said it was not new evidence, it was old evidence. He said it's been heard before, and he said it had not been heard before.

Q. What else did Angelo say? A. I don't remember exact words. I don't think he said much more than reading.

Q. He wound up by saying, "Give them back their jobs," didn't he? A. He might have, yes.

Q. Then did you speak? A. I don't recall if I did or not. I don't think so.

Q. Did any of the men who had been discharged speak? A. I can't recall if they did or not.

Q. Were you prevented from speaking? A. No.

Q. When was that deposition taken? A. I don't have the date it was taken.

Q. To your knowledge, was it taken after the first hearing? A. Yes.

Q. After that hearing what happened? You got a decision? A. After the second hearing?

Q. Yes. A. Yes.

Q. And what was the content of that decision? A. We were not entitled to a new hearing.

* * * * *

[212] A. The working conditions at Anchor Motor Freight never got better, they got worse.

Q. Give me a specific instance. A. Changing of the dispatch whenever they so desired. Harassment if you came in off a trip, if you booked off sick, that you were to go get a doctor's certificate from your own doctor that you were sick. There was no allowable time that you could be off sick. 24 hours or nothing. If you were going home sick you had to bring back a doctor's certificate.

Q. You claim that conduct breached your labor agreement? A. Yes.

Q. It is not that the agreement just wasn't good enough, **[213]** it was just an out and out breach of the agreement? A. Yes.

Q. Did you file grievances? A. Yes.

Q. You? A. Yes.

Q. Tell us the nature of your specific grievances. A. Coming in on the dispatch, they would change it whenever they so desired. They would tell you that they had no seven carloads there for you to run, and they would say I only have a six carload or a five carload and yet the dispatcher would never even leave that window. The

next man up, he would have a seven car load for him such as this is what I am talking about.

* * * * *

[214] Q. As far as the hearing itself you got to say everything you wanted to say on that second time around? A. Yes.

Q. And on that day there was nothing unfair about the procedures at that meeting? A. No.

Q. At that second hearing what should Angelo have done that he didn't do? A. What should he have done?

Q. Yes, that he didn't do. A. He should have investigated it.

Q. He presented the Repucci deposition? A. Yes.

Q. Then he argued that this shows that you guys did in fact pay the money that appears on the receipts? A. That's correct.

Q. That is the way he argued it? A. Yes.

* * * * *

[215] Q. But you are not claiming that they consciously did you in knowing you were innocent? A. No, I can't say they did.

Q. You don't claim that the International Union somehow got together with the company and did you in, do you? A. I can't say specifics that they got together and said, "We are going to put him under," but there were **[216]** meetings between the company and the union and there was no representation with the men there.

We were getting no representation from the local all this time.

Q. What you are saying is that Anchor and the International Union had meetings about your case? A. Not the International, the local union.

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[217] Q. Was the request for the election, was this a request made by the membership at that meeting? A. Yes, it was.

Q. And Angelo chaired the meeting? A. Yes, he was in charge of the meeting.

[218] Q. And he entertained that motion? A. Not right away he didn't, no.

Q. But he did ultimately, I assume, before the meeting was over? A. The men threatened to walk out if they didn't get some type of election.

Q. So he permitted it then upon that threat? A. Yes.

Q. And two men were elected? A. Yes.

Q. You were officially at that time recognized as committee man for the local? A. Yes.

Q. As committeeman was part of your responsibility to accept and entertain grievances? A. Yes.

Q. If men brought them to you? A. If the steward was not available.

Q. Did you have any problem with reaching any of the officers of the union while you served as committeeman? A. Yes.

Q. Who did you try to reach? A. John Angelo many times, Abe Schwartz. They were either on vacation or couldn't be reached.

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[219] Q. Was there any discussion with the union how your case would be presented? A. Just that John Angelo told us we had no worries at all, to let him take care of it.

Q. Did he ask you to be there if you wanted to be there? A. Yes.

Q. You did say that you asked him whether a lawyer should be present or not? **[220]** A. Yes.

Q. And he told you that it was not customary to have lawyers there? What did he tell you? A. He said the Panel does not like to have a lawyer there, they have no say-so.

Q. Did you insist on bringing your own lawyer? A. We didn't insist upon it, no, on his advice that they couldn't say anything anyway.

Q. So then you didn't ask them to bring your own lawyer? A. We asked him about the lawyer for the union.

Q. What did he say to that? A. He said it wouldn't be any good, we didn't have to worry about anything.

Q. Did you insist that he bring a lawyer from the union? Did you accept it? A. We took it as his advice of knowing what was going on.

Q. Then, as I understand it, you testified you attended a hearing and everybody wanted to go, and anybody who wanted to say anything in his own behalf was given a right to do that, is that right? A. Yes.

Q. As far as you know, were there any rules that stopped either you or your representatives from questioning Mr. Sandy who presented evidence on behalf of the company? A. No.

[221] Q. You could have done that as you so desired? A. Yes.

Q. You advised the Panel of your personal position in the matter, did you? Did you make a statement to the Panel? A. Yes, saying what took place as far as what I paid for the room and I had nothing to do with the card that the motel owner kept to himself.

Q. Then as of that time you did not have the deposition which you later acquired? A. Yes.

Q. From the hotel owner, right? A. Yes.

Q. So the evidence that went before the Panel was your disclaimer of doing anything wrong, right? A. Yes.

Q. And the Company's evidence of a receipt, your registration and a letter from the owner, right, together with the testimony from Mr. Sandy? A. On Mr. Angelo's advice that is what—

Q. I am trying to summarize the evidence that was introduced to the Panel. There was only one witness on behalf of the company? A. Mr. Sandy was the one that spoke for the company.

Q. Just he alone, he brought no other witnesses? A. No other witnesses, no.

[222] Q. And how many witnesses testified in your behalf? A. Maybe two-thirds of the men had something to say.

Q. Two-thirds of the men that were present, two-thirds of the 11, about as many as eight or nine of them testified? A. I don't think all 11 were there, so I would say about seven maybe.

Q. About seven testified and all of them said that they had not done anything wrong? A. Thats' right.

Q. And all of them attempted to contradict what Mr. Sandy had testified to, is that right? A. Yes.

Q. And Mr. Angelo made the assertion that the company had not proved its case, and that it was the obligation of the Panel to reinstate you? A. Yes.

Q. He did make that assertion? He did make that demand upon the Panel? A. Yes.

Q. And then later you received notice that the Panel upheld the company's position? A. Yes.

Q. Now, at that hearing—and I am now referring to the complete picture of what you are contending—was there **[223]** anything that Local 377 did in the way of using false information in order to get the result that was obtained? Did Local 377 present any false information? A. No.

Q. Do you know of anything that Local 377 or a representative of Local 377 did together with the company which would lead you to conclude that Local 377 conspired with the company to have you discharged? A. No, not that they conspired to have me discharged.

Q. You don't know of anything? A. No.

Q. Is there anything in the contract, any rights that you were guaranteed in the contract, procedural rights in connection with the processing of your discharge grievance that was not followed by the union? A. I don't have the by-laws of the union. I didn't have one of those.

Q. Let me ask you, do you know of any facts which would support this statement that Local 377 failed to accord you a proper representation because it failed to follow the contractual grievance procedure? Do you know of anything that they did that was inconsistent with the contractual grievance procedure? A. No, just that they didn't do anything, as far as trying to find out the facts.

[224] Q. Isn't that the real basis of your complaint, that they didn't investigate this enough? A. Yes.

Q. You think that if they had done a better detective job they would have been able to disprove the evidence that the company had presented, is that it? A. They might have, yes.

Q. Let's talk about that for a moment. You did hire an attorney? A. Yes.

Q. Didn't you in connection with these proceedings hire an attorney? A. Yes.

Q. And the attorney you testified took a deposition, is this what it is, or is it an affidavit? Do you know? A. I'm not sure.

Q. Anyway it is a statement under oath that he obtained from the owner of the motel? A. Yes.

Q. Did he obtain any other evidence for you? A. No.

Q. The only evidence that you had for the second hearing that you didn't have at the first hearing was an affidavit of the owner of the motel and this is the same person who had written a letter on which the company relied at the first **[225]** hearing, is that right? Did the attorney appear with you at the second hearing? A. Yes, he did.

Q. Did he speak at the second hearing? A. No.

Q. Did he ask for an opportunity to speak at the second hearing? A. He was told before he went in that he could not speak.

Q. Did he come into the room while the hearing was conducted? A. Yes.

Q. Did he offer any evidence to the union to present? A. He was not allowed to do anything. He could just sit, he was told, and listen.

Q. Did he talk to the union representative before he went in the hearing? A. Yes.

Q. Did he talk to John Angelo? A. Yes. I don't know what the conversation was.

Q. Do you know what information he gave to John Angelo? A. No, I don't.

Q. Do you know whether John Angelo followed the instructions that were given to him by your attorney? A. I don't know of any instructions that were given to him.

[226] Q. You don't know if your attorney instructed him? A. No.

Q. How did John Angelo obtain the documents that your lawyer obtained from the owner of the motel? A. The lawyer must have given it to him.

Q. Did he give it to him prior to the hearing? A. I don't know. He might have.

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[227] Q. Your petition says that you were not given proper notice with respect to the hearing. Were you advised of a hearing in time to be present? A. The first hearing?

Q. Yes. A. Yes.

Q. And were you advised of the second hearing in sufficient time to be present at the hearing? A. No, official notice was given, no.

[228] Q. No notice at all? A. No written notice. It was just verbal.

Q. You were given verbal notice by whom, by officers of Local 377? A. Yes, by Abe Schwartz.

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Deposition Testimony of John J. Angelo

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[229] Q. All right, Mr. Angelo, do I understand correctly that you have been unable to locate any of the records or documents requested in the notice? A. If they are not here, I must have not got them.

Q. You looked every place that you could reasonably look to find them? A. That's right, that's right.

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[230] Q. Do you know how the Local rider was negotiated, the one that was in effect when you took over? A. No, I don't. I took the contract that was signed and the rider.

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[231] Q. When you took over jurisdiction of the Anchor terminal at Lordstown, did you submit the Local rider which you had taken over from the Cleveland Local for ratification? A. It was a signed document. I as-

sumed that it was [232] already okayed. We have to take over the obligation of the signed contract. That's the bible. We live up to it good, bad, or indifferent.

Q. What bible provides that? A. The contract that was signed by both the Company and the Union and the rider.

Q. Do you have any records pertaining to the transfer of jurisdiction from the Cleveland Local to 377? A. No, sir.

Q. Did you ever have any complaints from the employees at the Anchor Terminal about the Local rider that you had taken over? A. Many, many.

Q. Many? A. Sure.

Q. Were they both oral and written? A. Could be, mostly oral.

Q. Do you have any written complaints? A. I don't have any.

Q. All right. What did you do upon receiving complaints about that document? A. Tried the best I could. I tried to satisfy the men and I tried to get the Company to go along and change it to their desire but that's the contract.

Q. What did you do to try to get the Company to change [233] it? A. Talking to them.

Q. Who did you talk to? A. I talked to the Company.

Q. Who at the Company? A. Well, I don't know. I talked to whoever was in charge. I talked to this gentleman many a times, I talked to other guys many a times.

Q. When you say "this gentleman" who are you referring to? A. Sandy.

Q. You talked to him about changing the contract? A. Well, whatever the complaint was, whatever the complaint was we are always trying to change it if we can

but the Company sticks to their guns and says that's it, the same as we. Whatever the contract is we got to live by it.

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[234] Q. Do you recall the names of any of the workers who had been discharged whom you got their jobs back for? A. No, sir. If I would see them I could tell you.

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[235] Q. Did the Company go first? A. I don't remember whether they went first or whether they went second but, regardless, we both had our day in court.

Q. Who spoke for the Company? A. I think Mr. Sandy. Now, I am not sure. He might have spoke for them.

Q. Do you remember what he said? A. No.

Q. Did he have any evidence beside his own argument? A. Whatever evidence or whatever argumentative points he had at the time, he presented the same as I did.

Q. You don't remember what he had? A. No, no.

Q. What did you say? A. Well, I said whatever the members that were involved told me to say, and not only that but gave each and every one of them an opportunity to talk before the committee, and then I even asked them, "Now, is there anything else that I left out? Is there anything else that you told me that I didn't say? Is there anything that you want to say?" And they were satisfied that that was all done.

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[236] Q. Do you recall what their stories were? A. That they were right and the Company was wrong, whatever it was.

[237] Q. Do you remember why they said they were right and the Company was wrong? A. Well, they said that they had receipts and that, or something like that; I don't know what it was, something on that order.

Q. Did you meet with these men before going to Detroit? A. Yes, sure. They have called me independently. They have come down there in groups.

Q. How many times did you meet with them? A. Oh, I don't know, I don't know. Whenever they called me, if I was available, I would be there. Sometimes they talked to him (indicating Abraham Schwartz) if I wasn't there, or vice versa, you know.

Q. Do you remember what they said in any of these conversations? A. Just that they were fired, they were fired and they was right and the Company was wrong.

Q. Is that all you remember from those conversations? A. Well, whatever it was, I mean it is in that line. It is not the idea what they said word by word but it was always that they was right and the Company was wrong.

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[238] Q. Do you remember what you told them? A. Anything that I told them, I told them that I didn't think that the men were fired justly and I think that they should go back to work, keep working, not go back but keep working, and did everything to try to keep the fellows on there and try to get whatever charges they had against them off, dropped off.

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[239] Q. You don't remember what they said, though, in addition to what you have already told me? A. Just that they were innocent and the Company was wrong.

Q. That's all you recall now? A. Well, when I say that, yes.

Q. All right. A. It is in their words, whatever they said.

Q. Do you recall about what you said? A. The only thing I recall is whatever they told me to say, that's what I said. Whatever they told me that they did or didn't do, that's exactly it. They are the ones that told me what to say and I said exactly what they told me to say.

Q. Did you have discussions with them about preparation and investigation for the handling of the case? A. The only thing that I can tell anybody if he come today, I would tell them, "Look, just make sure that you are **[240]** telling me the truth, just make sure that you have everything so that nobody can counteract what you are saying or doing or done."

Q. Do you recall saying that at the time? A. I may have told them, sure, "Just tell the truth."

Q. You might have? You don't know? A. I always tell them to tell me the truth; in that way I would know how to handle a case better.

Q. Do you recall anything else you might have told them? A. Well, I know that I must have told them but anything else, I might have told them a lot of other things, I don't know.

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Q. Do you remember any of the substance of any other things you told them? A. All I know is that I wanted to get these fellows back to work and whatever I told them or whatever I told the committee, the Joint Committee, was in their behalf. I told them exactly what evidence they give me or whatever they give me, whatever they told me, I told the Board, and even after I got through with presenting the case, **[241]** I asked them all, "Now, is there anything that I left out? Did I do exactly what you wanted me to do? Is there anything

that you want to add? Is there anything you want to say in your behalf?" and we got the Board to let them hear whatever they had to say or anything.

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[242] Q. When the representative of the Company spoke at Detroit, did anyone ask him questions or cross examine him? A. We was both asked questions. Some of the committee I imagine asked questions. They always ask questions on both sides, the employer's group and the Union group.

Q. Did you have a right to ask the Company representative questions? A. Oh, yes.

Q. Did you ask him questions? A. I think I did.

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[243] A. But I do recall that we did have another hearing.

Q. Was this in Detroit, too? A. Yes.

Q. Did you go to Detroit? A. Yes, sir.

Q. Who else went to Detroit? **[244]** A. Well, there you go again, the same. There was committeemen, there was guys that was discharged, I think Mr. Abraham was there—Mr. Schwartz.

Q. What happened this second time in Detroit? A. Well, there again we had—I think they hired an attorney at that time. I think they had one at that time. I don't remember. But I know that they presented me—I am pretty sure now that they had some attorney and I don't recall whether the attorney was there or not, but I know that I had a document, what do you call them, like is in book forms? They give me something that their attorney had.

Q. Uh-huh. A. And once again I did the same thing that they told me. Whatever was in the book, whatever

they wanted me to present, I did it. And then when I got through I asked the man the same thing. I said, "Now, is there anything that I left out? Is there anything that you forgot to tell me that you want me to tell them? Go ahead and do it." Each and every one of them. They was all satisfied that I presented the case perfect for them.

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[245] Q. Is it difficult to find a job for a man that's been **[246]** discharged for dishonesty? A. We don't tell the other employers, hell, no. We get him a job. We get him a job.

Q. You don't tell the other employers? A. No. If they want men, we tell them, "Here is a good man, damn good man." We don't tell them.

Q. You tell the men not to put that down in their application? A. I don't tell them nothing. Whatever they put on the application is their business. I don't tell them nothing. If they come to me and ask me if I have any work, if I have it I send them out. I don't want their troubles and they don't want mine.

Q. Did the employers ever ask you where the men worked before? A. Not necessarily because they call up, they want a man, and so I send him out. He does his own dickering. He gets his own. You know, we tell him there is a job over there, they want a driver for 8:00 o'clock in the morning or 6:00 o'clock in the morning. "Do you want to go?" If they say yes, go ahead, whatever he does from then on is his business.

Q. Do you find that men who are honest in revealing **[247]** they have been discharged for dishonesty have trouble getting another job? A. Well, that's a hard question to answer.

Q. In your 38 years of experience this has arisen before, hasn't it? A. It has arisen but they are still working. If we don't find them one place they find another, some time more so and some time not. You know, sometimes the employer don't check where he worked last, don't know what the guy's record is. I am sure I am not going to tell him.

Q. What if they ask you? A. I don't know. What do I know? He ain't working there, I don't know.

Q. And you do this to help your men? A. All the time, whether you believe me or not or whether they believe me or not.

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[248] Q. Have you ever been given any gifts either in money or goods by the Anchor Motor Freight or any of its officers or employees? A. No, sir, none that I know of.

Q. Has Anchor Motor Freight or any of its officers or employees ever made any loans to you? A. No, sir.

Q. Have they ever made any loan of goods? A. No, sir.

Q. Tangible objects? A. Not that I can remember.

Q. Has the Anchor Motor Freight or any of its officers or employees granted you any personal favors? A. Not that I know of.

Q. Have you ever been given the use of an automobile owned by the Anchor Motor Freight Company? A. What do you mean by that?

Q. Exactly what the question says. A. What? What do you mean? I don't understand. I don't understand what you mean.

Mr. Schwartz: Would you read **[249]** the question, please?

(Question read.)

A. What do you mean by that, have I ever been given? They give you nothing. What do they give you? What do you mean by that? What are you trying to drive at?

Q. Has anyone connected with the Anchor Motor Freight Company ever permitted you to use a car owned by that Company? A. Can we have a couple minutes' recess?

Q. No, not right now.

Answer that question. A. I don't know what you mean.

Q. Have you ever driven a car owned by the Anchor Motor Freight Company? A. I don't know what you mean.

Q. Have you ever driven a car? A. I don't know what you mean.

Q. Owned by Anchor Motor Freight? A. I don't know what you mean.

Q. That's a pretty straightforward question. It is unambiguous. A. I don't know what you mean. If I did I'd give you an answer. I don't know what you mean.

Q. That's a pretty straightforward, unambiguous question, Mr. Angelo, and it is very simple to answer that yes or no.

[250] Mr. Green: The characterization of your questioning I think is objectionable.

Q. What is it in the question, Mr. Angelo, that you don't understand or what words do you not understand? A. I don't understand what you are talking about.

Q. You know what an automobile is?

You know what an automobile is. There is nothing that you don't understand about the word automobile? A. I don't understand what you are talking about, sir.

Q. All right. Do you understand what I am referring to, Mr. Angelo? Look at me and not your counsel

now. A. Don't tell me where to look. Ask me the question.

Q. I am asking you the question. A. Don't tell me where to look at, Bud. I am not telling you where to look.

Q. All right. A. And don't be accusing me, either.

Q. I am seeking information. A. I told you I don't know, I don't understand your question.

Q. You don't understand? I am trying to work it through with you to try to explain. All right? Now, do you have any difficulty understanding the concept of automobile? A. I don't understand what your question is.

[251] Q. Do you know what I mean when I refer to Anchor Motor Freight? A. I don't understand what your question is.

Q. What would you like me to explain? A. Whatever you want. I don't understand your question.

Q. You don't understand any word in the question? A. I don't understand your question.

Q. Have you ever borrowed a car from anyone else? A. I don't understand your question.

Q. Have you ever borrowed a car from a friend or a relative? A. I don't know. I don't understand your question.

Q. You have children, Mr. Angelo? A. Yes, sir. Do you?

Q. Yes. A. So do I.

Q. How old are your children? A. What's my children got to do with this?

What are you getting into my personal business for?

Q. How old are your children?

My responsibility is to ask the questions and yours is to answer.

Are your children adults now? A. Yes.

Q. Do any of them own cars? **[252]** A. No.

Q. Does your wife own a car? A. Yes, sir.

Q. Has she ever permitted you to drive it? A. Yes, sir.

Q. All right. Does Anchor Motor Freight own any automobiles? A. I don't know. Ask them.

Q. Does Anchor Motor Freight have control of any automobiles? A. I don't know. You will have to ask them.

Q. Has any officer or employee of Anchor Motor Freight ever permitted you to drive a car that is in their control? A. I don't understand your question.

Mr. Green: May we have a recess?

Mr. Schwartz: A short one.

Mr. Abraham Schwartz: It is lunchtime. I'm hungry.

Mr. Schwartz: Let the record show that Mr. Angelo is conferring with his counsel.

Mr. Green: And let the record show that I have asked for a recess and counsel refused to grant it, and I also say that we are going to take a recess without permission of **[253]** counsel.

The Witness: And I got to take a leak so I am going to go out.

Mr. Abraham Schwartz: Put that on the record.

The Witness: Yes, put it on the record.

Mr. Schwartz: The deposition is de facto recessed, Mr. Reporter.

The Witness: Is what? What does that mean? Would you ask me the same question again, sir? No, no kidding.

Mr. Schwartz: Off the record.

(Discussion off the record and recess had.)

By Mr. Schwartz:

Q. Let me repeat the question that we recessed with and the question is: Have you ever been permitted to use an automobile owned or under the control of Anchor Motor Freight? A. Well, one night Abe and I went out there, one day we went out there on a grievance. I rode with Abe Schwartz and the meeting or the grievance hearing lasted **[254]** longer than we thought, and Mr. Schwartz had another meeting in Youngstown and, well, we had a lot more grievances to go through and it was later than we thought and Schwartz had to go.

We asked them if they could see that I get a ride back into Youngstown because they are out in the wilderness. I don't know if you know where Anchor Motor Freight barn is.

And they says, "Yes, we will see that you get a ride back." So Schwartz left and we kept on with the grievances.

So he says—well, I don't know what it was at that time, it was something that they wanted, they couldn't take me down, they said, "But take this car and bring it back tomorrow. Okay?"

So I drove off and as I am going up Oakhill Avenue, somebody pulled out of a street and wrecks me, wrecks this car. I am lucky that I am here today and I am lucky that they didn't turn me over.

So I called the Company and they said to get it fixed, so I got it fixed. When I got it fixed, when they were through fixing it, they didn't fix it on the spur of the moment—when they got through fixing it, I brought it back to the Company.

Now, if that's what you call if they ever give me **[255]** anything, if you call that giving you something, then—but I don't think it is. They agreed to see that I got back into my office where my car was and they

couldn't make it so they told me what to do and that was the unfortunate thing that happened.

Q. Who was it from the Company that permitted you to use that car? A. Well, who was it? Whoever was in charge there. I don't know who it was.

Q. You don't recall? A. It might have been Babich or somebody. I don't know.

Q. When you say Babich, who are you talking about? A. He is—what do you call him, the manager down there? I don't know. The guy that is in charge there.

Q. He is in charge of the Lordstown Terminal? A. As far as I know.

Q. What is his first name? A. Gene.

Q. Where did you have that car fixed? A. I had that car fixed at the auto body shop on Himrod Avenue.

Q. What year was that, do you know? A. No, I don't know.

Q. Do you have any records of that accident or of **[256]** the car being fixed? A. No, I don't know, but I had it fixed there and I think the insurance people paid for it because we do carry insurance on our cars and it automatically goes over on whatever car I drive.

Q. What insurance company is that? A. I don't know what the name of that insurance company was that hit me that paid for it. I don't know. It was in Campbell, Ohio, is where the guy lived and he had a guy down there and I talked to their insurance company.

They told me to get it repaired and he would pay for it.

Q. Did the police come out at the time of this accident? A. I don't recall. It was an old fellow that hit me. I don't think he could speak very good English. I don't recall, I tell you the truth.

Q. Did the accident take place in the City of Youngstown? A. Yes, on Oakhill Avenue, yes. He was going up Oakhill Avenue. This was in the evening some time.

Q. Do you recall what kind of car that was? A. Chevy.

Q. A Chevy? A. Yes.

[257] Q. What is your wife's name again? A. Elizabeth.

Q. Is she known as Betty? A. Betty, yes, yes, short for Elizabeth.

Q. Do you know any other Betty Angelo besides your wife? A. I don't think so.

Q. I believe you testified earlier you lived at one time on Raccoon Road. A. Yes.

Q. Have you ever been involved in any automobile transactions, buying or selling, with Mr. Babich? A. I think at one time in Detroit there was an outfit over there, in fact, and I gave him a check to buy a car for me.

Q. You gave who a check to buy a car for you? A. I don't know whether it was Babich or one of his fellows.

Q. Why did you give him a check to buy a car for you? A. Well, I asked him if there was a car over there that we could get at this dealer and he bought it for me. He told me what the price was and I give it to him.

Q. Why did you go through him rather than buy it yourself? A. To get—well, you shop around for bargains.

[258] Q. Do you have that canceled check? A. I might just have it on me unless I give it to my attorney, I don't know. I may have it. I happen to have it.

* * * * *

[259] (A recess was had.)

(A copy of a check was marked, for identification, as Plaintiffs' Exhibit No. 2.)

Q. All right, Mr. Angelo, I am handing you what has been marked as Plaintiffs' Exhibit 2, is that an accurate copy of the check which you described just before we recessed? A. Yes, sir. There is one more thing I wanted to add.

Q. All right. A. That that was no bargain that that guy told me I was going to get. I could have got it cheaper here. Not only that, there was something else. He said he spent, I forgot what it was, 10 or 20 dollars more than I give him, in cash. I said, "Don't do me no more favors." But it wasn't no bargain.

Q. Who was it you gave the $20 more to? A. To Babich. Now, I don't remember what it was but there was some money I had to give him because the check wasn't enough. So it was no bargain, that's what I wanted to do for the record.

* * * * *

Q. Never been a defendant in any criminal case?

Mr. Green: Object.

Q. He has objected for the record. Go ahead. A. I don't understand you.

Q. Have you ever been charged with any crime? A. I don't know what he means. I don't know if he means this other thing or this. I don't know. Personally, no, outside of this here other thing. I don't know what you mean. I have been indicted.

Q. All right. A. But I mean it isn't personal, it is Union, personal but still—

Q. It is in connection with your function as a Union officer? A. Oh, yes.

Q. What have you been indicted for? A. I don't know. Ask them. I ain't done nothing. What the hell do I know.

Q. How many times have you been indicted?

Mr. Green: Object. Go ahead and answer.

A. I'll tell you the truth. So confused I don't know myself. Ask my attorney, what the hell.

Mr. Schwartz: Would you like to clarify the record on that point?

Mr. Green: I object to the question. I don't think it is relevant and I think it is improper.

Mr. Schwartz: I concede it is not a question the answer to which is admissible but it may lead to relevant evidence and, therefore, under the Federal Rules it is a proper discovery question.

Mr. Green: For the record, he pled no contest to second degree rioting in the Common Pleas Court in Youngstown, Ohio, arising out of an incident involving FASH. He is currently under indictment.

Mr. Schwartz: Would you like to furnish this information subsequently?

Mr. Green: I think you will find it is a matter of public record. It is up here. I am not his counsel in the matter so I am not familiar with it, but I am saying the things I am referring to are matters of public record. The indictments are established and I am sure the counts of the indictment can be found here in the court.

Mr. Schwartz: He has been indicted in the Federal Court for the Northern District of Ohio in Cleveland?

Mr. Green: Right.

Mr. Schwartz: Any other indictments that you are aware of?

Mr. Green: No.

* * * * *

[260] Q. Did you get together with the Company and say, "Hey, we are going into the tank on this one,

we will make it look like we are making a good fight but we ain't going to make much of a fight because we don't like these guys"? A. Any time we talked to the Company, we told them to put these folks back to work.

Q. Just try to answer that question directly. A. Hell, no.

Q. All right. Did the Company ever come to you and say, "Come on, let's get together and do these guys in, they are troublemakers, make it look like you are fighting but don't really fight"? Did anybody come to you from Anchor and talk that way? A. If they did I would set them on their can.

* * * * *

Deposition Testimony of Abe Schwartz

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[265] Q. At the time you assumed jurisdiction of Lordstown, did Anchor ask for any personnel from the union? A. I really don't recall. They brought a lot of people of their own down.

Q. They brought a lot of their own people from where? A. From where they came.

[266] Q. From Norwood? A. Norwood.

Q. Do you know what percentage of those men had come from Norwood? A. I would say a pretty good percentage. I don't exactly know because at that time we didn't have too many people not working.

Q. Do you recall how many of those drivers would have been from Norwood? A. No.

Q. You don't recall? A. I don't think I could recall.

Q. You don't recall even approximately how many were from Norwood? A. I would say around a hundred.

Q. There were a hundred altogether? A. Well, that's rough.

Q. You recall a hundred altogether? A. I would say so. Most of them were from there.

Q. From Norwood? A. Yes, from Norwood.

Q. More than 75 percent? A. If there was a hundred there, I would say 75 percent or better.

* * * * *

[267] Q. What did you do with them when you got them? A. We had hearings on a local level.

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[268] Q. My question is: Does Local 377 have any of the documents asked for in Items 1 through 13 of the notice? A. Well, personally, I don't know whether we have or not.

Q. If Mr. Angelo testified that you did not, you would not be in a position to correct this? A. I wouldn't, for the simple reason that I didn't look myself.

Q. And he would know better than you would whether those documents were available? A. That's right. He handled the office.

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[269] Q. Do you have the responsibility for all of the shops in the 377 area, or are you assigned different duties? A. We've got nine agents and each one handles a certain amount of shops.

Q. Is the Anchor Motor Freight at Lordstown terminal one of your shops? A. It was at one time.

Q. Was anybody else assigned to that shop at that time? A. Angelo and myself.

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[270] Q. Did Mr. Babish specifically complain to you that any of the men were troublemakers? A. No.

Q. You don't recall this? A. I don't recall that any of them were troublemakers.

* * * * *

[271] A. They told me they got fired.

Q. What else did they tell you? A. They told me they got fired for—they said it was on account of the receipts they got from the motel.

Q. What else did they tell you? A. I don't even remember anything else. I know that's what they were fired for.

Q. What did you tell them? A. We had a hearing on it and the company—

Q. No, what did you tell them at the time they came to you and said they had been fired? A. What did I tell them at that time?

Q. Yes. A. I questioned them and they answered my questions and so forth and we had a hearing on it.

Q. What questions did you ask them? A. What did I ask them?

Q. Yes. A. I asked them what happened.

Q. What did they tell you? A. The only thing I know is that they felt they were innocent concerning it. Exactly what they told me, I don't know.

Q. You don't recall? A. Just that they said that they were innocent of what they **[272]** were accused of.

Q. What did you do next? A. We had a hearing with the company.

Q. How did you happen to have a hearing with the company? A. We requested a hearing.

Q. Who requested it? A. Probably Angelo and myself.

Q. Angelo and yourself? A. We requested it.

Q. Do you remember requesting it? A. Yes, yes.

Q. All right. Did you request the hearing orally or in writing? A. I don't remember that.

Q. Do you remember whether it was you or Angelo who, in fact, requested the hearing? A. I don't remember that.

Q. Did you or Angelo go over to Lordstown? A. Yes.

Q. Did you both go? A. Yes.

Q. Did you go to Lordstown together? A. Yes.

Q. What did you do when you got there? A. We had a hearing with all the men and the steward, the **[273]** committee and the company.

Q. Was the hearing held immediately after it was requested? A. I don't think there was much delay.

Q. Where was the hearing held? A. Anchor Motor Freight's Conference Room.

Q. Who was present at that hearing? A. Babish and Sandy, that I'm sure of, outside of our own committee.

Q. Who was on the committee at that time? A. I don't remember.

Q. The only persons you specifically remember being there are Sandy and Babish? A. Yes.

Q. And you were there? A. Yes.

Q. Was Angelo there? A. Yes.

Q. Who was the first person who talked? A. I don't know who started the conversation.

Q. All right. Do you remember what anybody said? A. Well, we discussed the case—the firing.

Q. Did you talk? A. I probably did.

Q. But you don't recall? A. I probably talked, but I don't exactly know the words I **[274]** said.

Q. You probably talked, but you don't remember having talked? A. I talked.

Q. Do you recall what you said? A. No.

Q. Do you recall what anybody else said? A. You see, you asked me questions and there's only one way I can answer you. When we go into these hearings, we go in there to defend a man, and, naturally, we are going to argue the points one by one, and case by case. Now,

to remember what was said, who said it, you are talking about something four years go and it's hard to remember all the particulars. We carried this grievance to Chicago and Detroit and I even got an extra hearing for them and that's all. I just don't remember more about it.

Q. Now we are talking about the local hearing. You say you argued the case. A. Right.

Q. What was your argument? A. We argued that they were innocent.

* * * * *

[275] Q. Did the company present any evidence to you? A. They did bring up some evidence.

Q. What evidence? A. They brought up evidence that they were doubling up in the rooms or, that is, that they were marking receipts wrong.

Q. What was their evidence that they had? Did they have documentary evidence that they showed you? A. They had something from the clerk. The clerk told them they both stayed in a room and they charged for singles.

Q. Did they show you the evidence? A. Yes, they had these.

Q. Who made the defense? A. Angelo and I.

Q. What was your basis for arguing the men are innocent? A. We always go on that basis that the men are innocent. That's our job.

Q. Did you have any evidence showing that they were innocent that you presented to the company? A. No.

[276] Q. Did you do anything between the local hearing and the Detroit hearing to prepare for the Detroit hearing? A. Yes, we told every man to be there and to state their case in case they thought we didn't present it in the right manner, or anything, to present it themselves, and if we forgot anything, we told them to speak up.

Q. What else did you do, if anything, to prepare for the Detroit hearing? A. There was nothing else to prepare.

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[277] Q. What happened when you got to Detroit? A. What happened?

Q. Yes. A. We had the hearing.

Q. Where was the hearing held? A. See, I forget names. This is at one of the hotels. At the hotel.

Q. Who was present at the hearing? A. Anchor, and there was the union group, the committee that sits down and listens to the cases.

Q. Do you recall who spoke first at the hearing? A. No, I don't.

Q. Do you recall speaking first at the hearing? A. No, I didn't speak at the hearing. John spoke at the hearing.

[278] Q. Do you recall what John said? A. No, I don't.

Q. Do you recall anybody else who spoke at the hearing? A. Some of the men that were involved.

Q. Do you recall what they said? A. No, I don't.

Q. Did anybody from Anchor speak? A. Anchor Motor Freight?

Q. Yes. A. Yes.

Q. Who? A. Sandy.

Q. Do you recall what Sandy said? A. I can't recall.

Q. Did anybody on the panel say anything? A. Well, they asked questions to our people and also to the company.

Q. Do you recall what any of the questions were? A. No.

Q. Do you recall any of the answers to the questions? A. No.

Q. What happened after everybody spoke who was speaking at that session? A. We left.

Q. You left? Did you get a decision that day? [279] A. I don't think we got a decision that day. We got it in a few days.

Q. What was the decision? A. That the company was upheld.

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Q. What kind of an investigation did you conduct into the guilt or innocence of the men? A. I just took their word for it that they were innocent.

Q. But you didn't conduct any additional investigation beyond [280] just taking their word for it that they were innocent? A. That's right.

Q. Did you or Mr. Angelo present any evidence to the panel in Detroit? A. They presented it—the men.

Q. What did they present? A. I don't remember exactly what they presented or what they talked about, but I know they all had an opportunity to speak.

Q. Do you know whether or not they had any written evidence that they presented in Detroit? A. I don't remember.

Q. Did you give the men any instructions in the procedure at Detroit and what their rights were under that procedure? A. Yes.

Q. What did you tell them? A. What else is there to tell them outside of there is a committee meeting and you're also going to have a chance to speak and if you think you should bring anything out, bring it up and they won't be barred from speaking their piece.

Q. Did you tell them whether or not they had a right to cross-examine the Anchor people who accused them? A. No, I don't remember that.

Q. Do you know whether or not they had such a right? [281] A. I'd like to question the company. I'd like a right to question them. I don't think so.

Q. You mean you don't think they have a right or you don't think you know? A. I don't think they have a right to question the company.

Q. Did you tell them of any other procedural right they had besides the right to state their case? A. There is no other.

Q. Did you tell them ahead that they had a right to challenge the members of the panel? A. No.

Q. Do they have a right to challenge the members of the panel? A. I don't think so.

Q. Are there rules of procedure under which the panel operated? A. They probably operated under rules of procedure.

Q. Do you have a copy of those rules of procedure? A. No.

Q. Have you ever seen a copy of rules of procedure? A. No.

Q. Did you ever make an effort to get a copy? A. I don't remember. I don't think so.

Q. Did you tell the men they had a right to have a lawyer represent them at the hearing? A. I don't remember if we told them that or not.

[282] Q. In your answer, the answers of Local 377 to the complaint, you admitted the allegations set forth in Paragraphs 1, 2, 3, 4, 5, 6 and 10.

Paragraph 8 alleges that you did not investigate the charges brought against the men and that you made no effort to determine the truth of the said charges and you denied that in your answer.

What effort did you make to investigate those charges? A. That's the same question you asked me before.

Q. And your answer is you simply talked to the men themselves? A. Right.

Q. What happened after you got the results of the hearing in Detroit? A. Well, I wasn't quite satisfied. The men came to me and they thought they weren't dealt with right, so I made a trip to Washington on my own.

Q. Why did you go to Washington? A. I wanted to get a new hearing. They said they had new evidence, so I wanted to get another hearing on the new evidence.

Q. Why did you go to Washington as opposed to New York, San Francisco, Chicago or New Orleans? A. I wanted to see Fitzsimmons.

Q. Who is Fitzsimmons? **[283]** A. General President of the International.

Q. He is located in Washington? A. Yes.

Q. Why did you go to see the president? A. I felt he could help us in getting another hearing for the men.

Q. What made you feel he could so help? A. I was there anyway and I thought I would stop in and I told the men and they said they got new evidence, so I asked Fitzsimmons if he would try to get a new hearing.

Q. When was this when you were in Washington? A. A little while after the case came down from Detroit.

Q. Did you have any other business with Mr. Fitzsimmons? A. No.

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[284] Q. Did you go to the second hearing? A. Yes.

Q. Where was that held? A. Detroit.

Q. What did you do to prepare for the second hearing? A. We talked to the men and let them present their new evidence.

Q. When you say, "We," to whom are you referring? A. I was referring to John and I, but I can't recall whether he was at that hearing or not. I don't remember.

Q. Did you go to that hearing? A. Yes.

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Q. Who was there at the hearing in Detroit? A. The men were there.

Q. The men were there? A. Yes.

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[285] Q. What happened at the second hearing? A. The same thing that happened at the first one. It was turned down.

Q. Did they say why it was turned down? A. They didn't feel they had any new evidence.

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Q. Do you recall specifically a man named Lindsay Worley? A. I remember.

Q. Do you remember a man named Graydon Croft? **[286]** A. Yes.

Q. Do you remember them any better than you remember the other nine that were discharged? A. If you bring out the names, I remember. I remember the two you are talking about.

Q. Did Mr. Babish ever talk to you about them? A. No.

Q. Did he ever tell you that he wanted to get rid of Worley? A. No.

Q. Did you ever tell any of the men that Babish told you he wanted to get rid of Worley? A. Never.

Q. Did anybody from Anchor ever tell you that 11 men were fired to get rid of Worley? A. No.

Q. Did you ever tell that to any of the men? A. No.

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Deposition Testimony of Daniel Sandy (Vol. I)

* * * * *

[288] Q. When the Norwood terminal closed, were there any provisions in any of the operative labor contracts which granted any rights to the employees who no longer had jobs at Norwood? A. Yes, sir.

Mr. Loeffler: I will object to that question as calling for a legal conclusion.

By Mr. Schwartz:

Q. What provisions—

Mr. Goldfarb: Now I will object, now you are asking for the conclusion.

[289] Mr. Schwartz: Withdraw the question.

By Mr. Schwartz:

Q. What rights were granted to those employees by what contract?

Mr. Goldfarb: Objection. If you know, go ahead and tell him.

A. They were the first ones under the Central Conference Area Supplement Agreement with the Teamsters. They did have rights; there was no such contractual obligation with the machinists. So our obligations were to those who were in the bargaining unit covered by the Teamsters' contract, and we so honored it.

Q. That was under the Central Conference— A. National Master Automobile Transporters Agreement, Central Conference Area Supplement.

Q. It was under the Central Conference Supplement rather than in the national document itself? A. I don't know whether it was covered by the supplement or whether it was carried by the national. There has been some language changes over the last few years. They have been catalogued going from the supplement to the national.

Q. At that time was it in the '64 to '67 contract that we are talking about? A. Was it in the supplement or was it in the **[290]** national? It would have been covered by the supplement.

Q. By the supplement? A. Yes.

Q. Would it have been the '64 to '67 contract? A. It would have been the '64 to '67, and I think the same terminology existed in the '61-64.

Q. Would you tell me what provision accorded those employees job rights of any kind? A. Article 29, Section 4 captioned "New branches, closing of branches, qualifications."

Q. And what was your understanding of what this provision entitled Norwood drivers to do?

Mr. Goldfarb: I'm going to object to the question, the form and the substance. The document will speak for itself. Go ahead and answer.

A. Would you repeat the question?

Mr. Goldfarb: Do you want his understanding?

Mr. Schwartz: What was the company's understanding of what the provisions that he just cited entitled the Norwood employees to do?

A. That those who were on the seniority list in Norwood covered by the agreement would have seniority rights at the Lordstown terminal.

Q. What do you mean by seniority rights? A. That they would have all of the seniority **[291]** rights that are covered by the contract: callbacks, etc., etc.

Q. And their seniority would be continuous from the time they were originally hired at Norwood? A. At Norwood, that is correct. For fringe items, seniority, seniority and seniority.

Q. And would they have hiring preference at Lordstown over new drivers, new employees? A. They would be called in seniority order as the work load became evi-

dent at Lordstown and we needed the people, we would call them from the seniority list that they were on in Norwood.

Q. Prior to hiring new drivers who had not previously been employed by Anchor? A. That is correct.

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[292] A. As the terminal was starting to take shape, the Teamsters started to get that gleam in the so-called eye, and we were petitioned by Local I think it was 964 that they were the bargaining agent for the barn and that they wanted to sit down and negotiate a rider, and I did negotiate with 964.

Q. When was this? A. I would say it extended over a period of time **[293]** in 1966. Beginning as the plant started to take shape.

Q. Beginning when in 1966? A. I would February or March.

Q. With whom from 964 did you negotiate? A. A Mr. Joe Bateman, and at a couple of meetings he brought a Mr. McDowell. And at one or two meetings he brought a Mr. Joe Ola.

Q. Now, at the time these negotiations were taking place, how many drivers were employed at the Lordstown terminal? A. There was a screening process going on, because we were sending letters, we were contacting the drivers, telling them that we were going to open as soon as the production started, and making a survey of how many of those had an interest in coming to work at Norwood. And as to the amount, I don't know, because at the time we didn't know the exact date as to when the first car would come off the assembly line, and as today when a new model is started, we don't have any conception. If they start on a new model in September, you don't know whether the cars are going to come out—

or be handed to you, if the opening date is September the 14th, it may well be sometime in October before you get an automobile, depending on the quality, depending upon the distribution. This falls within the logistics **[294]** department of General Motors.

Q. Would you repeat the question, Mr. Reporter.

(The record was read by the Reporter as follows:

"Q. Now, at the time these negotiations were taking place, how many drivers were employed at the Lordstown terminal?") A. Do you mean how many drivers were actually transporting cars from the terminal to the dealers?

Q. That's right. A. When the negotiations first started, we didn't have any cars being distributed, but by the time that the rider was consummated, there were drivers. As to how many, I don't know.

* * * * *

[295] Q. Over how long a period of time did the negotiations take place that resulted in this contract? A. I would say there were between nine to ten meetings with Local 964.

Q. When did those meetings start? A. I would say sometime in February.

Q. When you were petitioned by Local 964, what did you do to determine that 964 was in fact the appropriate entity for you to bargain with? A. With his petition stating that he did have jurisdiction, and we weren't in a position to ascertain whether or not he had outside of his stating that his charter covered that area and the car haulers.

Q. You say his petition. Was this a written document? A. To us. I stated before I don't know whether it was by phone or by a letter.

Q. So you simply took Mr. Bateman's word for the proposition that he was the appropriate person for you to negotiate with, and you didn't do anything to check [296] the validity of his claim? A. No. Since we already had a contractual obligation to bring them in, we could care less who was the bargaining agent. We did know that the Teamsters had the right under the contract which was in effect. We didn't care whether it was local 100, 964, 377 or whatever they wanted.

Q. Did you know whether any of the Norwood drivers had transferred their membership to any other local? A. I would have no way of knowing that.

Q. Did you inquire? A. No.

Q. When you negotiate local riders, are you aware of whether or not those riders are submitted to membership for ratification? A. I have no feeling about it. I wouldn't know whether they are ratified or whether they aren't.

Q. You are not concerned with that? A. I'm not.

Q. When a secretary-treasurer of a local signs a local rider, does that mean either that it has already been ratified or that there is no requirement that it be ratified? A. The only contractual obligation that we have, [297] there is a step in the national that it goes to the area conference for review.

Q. That local riders go to the area conference for review? A. Yes, sir.

Q. Before or after the local union signs the document? A. After.

Q. Did this document go to the area conference for review? A. It did.

Q. How do you know that? A. I was present when the—Both parties must be present when it's reviewed by the local rider committee.

* * * * *

[298] Q. Is any inquiry ever made in any of these cases into whether or not the local rider is ratified by the membership, by the employees? A. I haven't heard of any.

Q. For what period of time did you maintain a relationship with Local 964 at the Lordstown terminal? A. It was very short. I would say maybe a week or two when we were petitioned by 377 that they were in the bargaining unit.

Q. Was this a written petition? A. I don't remember, but there was a petition.

Q. When you use the word petition, that can mean simply an oral request. Is that what you mean by the word petition? A. And I am so stating that we had a request that 377 was the bargaining agent.

Q. Who made that request? A. I think it was made through John Angelo.

Q. Was that made to you personally? A. I don't remember.

Q. And did you simply take his word for it, too? A. I did.

* * * * *

[299] A. Yes. And 964 through Mr. Bateman informed me that 377 was the bargaining agent. I didn't seek nor did I understand the machinery by which they made that determination, but I did—if it was 377, you know, it was fine with me.

* * * * *

Q. It was approximately one week after April 5th that you received this call from 377? A. I would say a week or two, yes.

Q. From that point forward you maintained your relationship with 377? A. That is correct.

Q. With regard to the Lordstown terminal? A. That is correct.

[300] Q. Were there more than a usual number of complaints about dispatch procedures and hours? A. I don't follow the dispatch and hours. The hours are set by law, the dispatch is set by two methods of dispatch. In our industry you either have first in-first out or you have seniority dispatch.

Q. And what was the system employed at Lordstown? A. I think it was first in-first out, and I think at the present time they have a semi first in-first out, intermingled with a seniority-type of a setup.

Q. Was this the same system that had been employed at Norwood? A. I don't think so.

[301] Q. What was the system at Norwood? A. I would have to say it was practically a bastard, unorthodox type of dispatch.

Q. All right. Would you describe it as best as possible? A. They had what they called in the vernacular of a poker dispatch where a man could pass, draw or check. On any given day if he didn't feel like working he would pass. If he came to the terminal and looked at the loads and he didn't like any of the loads but there was an expectation that a better type load would come in the afternoon, he would check. And I don't know how the draw came in, where he would draw.

Q. Was that a system which was provided in the local rider there? A. No, I think it was—it had just grown topsy-turvy over the years. They also had a—in the form of a dispatch, that on a given day if Joe didn't want to be on Truckaway, when he came to work in the morning he could voice an opinion that he wanted to work in the yard, and he worked in the yard. As a result, on any given day we didn't know how many Truckaway people we had or how many yard people.

Q. Did you find that the drivers who transferred from Norwood complained about the changes in dispatch

[302] procedures at Lordstown? A. I didn't find any overwhelming amount of dissent. In fact, I would say it was mostly minimal.

* * * * *

[303] A. No, he wouldn't know whether there was a—because I don't think there was a greater degree of or a greater flow of grievances from Norwood than there would be from any other group. When we first set up the terminal I imagine those grievances that did arise by the very nature of it, that they were ex-Norwood drivers, that your answer would be affirmative, that those grievances that arose had come from Norwood drivers. That's all we had, that was the nucleus. Now, as the terminal expanded, I don't think we had a greater number of grievances from Norwood or we had more severe grievances from Norwood than we had from any other group.

Q. Did there come a time within the first year of the operation of the Lordstown terminal that there was a wildcat strike? A. There was.

Q. Did you play any role in the resolution of that strike?

* * * * *

[304] Q. Was there any leadership among the strikers? A. I wouldn't know that. I would say it was a hundred percent effective.

Q. It was a hundred percent effective? A. Yes.

Q. Did you know that the strike was coming? A. No.

Q. It came as a complete surprise to you? A. Absolutely.

* * * * *

[305] Q. Did you send discharge notices to one hundred percent of the employees? A. I would say ninety-nine and nine-tenths percent. If one was left it was through inadvertence, but we did send them.

[306] Q. And upon receiving the discharge notices did they come back to work? A. They did not.

Q. What did you do next? A. We went to court and we sought an injunction, and we received the same.

* * * * *

[307] Q. Did you get anything indefinite? A. We did get that they wanted the dispatch system written, we agreed that we would write it. There were other items that were in practice that they wanted in writing, and we agreed that we would reduce it to writing. That's pretty much it.

Q. Was there anybody with whom you negotiated on behalf of the strikers? A. We negotiated, we had meetings with the officers of 377 and the committee that they had chosen.

* * * * *

[308] Q. Did anybody from 377 or the committee or any of the rank and file wildcats ever suggest that the local rider that had been negotiated with 964 was a source of dissatisfaction? A. No. As stated to your previous question, there were statements made that they wanted the procedures that were in effect, that they wanted them to be reduced to writing. As to the other, I don't remember of any.

* * * * *

[309] Q. At any point in these discussions did you ever take the position that there were some of the men whom you did not want to rehire? A. None whatsoever.

* * * * *

[311] Q. Now, had any of the Plaintiffs in this action or the three persons discharged, the other three persons discharged at the same time, ever been previously discharged by Anchor? A. Mr. Worley had been previously discharged.

Q. And was he subsequently rehired? A. No, sir. He was returned to work by a conference decision.

Pardon me. I'm not making a play with words. You said was he rehired? He was returned to work.

* * * * *

Q. All right. Are discharges of drivers for cause under the contract a relatively frequent occurrence **[312]** at Lordstown? A. I would say not.

Q. Is the frequency at Lordstown roughly equivalent to any other terminal? A. I would say the equivalency is about the same.

* * * * *

Q. Did you participate in a decision to discharge 11 drivers in 1967 for alleged dishonesty? A. I did.

Q. And were the eight Plaintiffs in this action eight of the 11 persons so discharged? A. I haven't cross-indexed the Plaintiffs against the 11 that I discharged, but I would say that they are.

[313] Mr. Goldfarb: Do you want to look at the Complaint? Who were the other three who are not Plaintiffs in this action?

The Witness: One of these is now deceased, I don't know whether that's Rogers.

Mr. Goldfarb: Yes, Rogers passed away.

The Witness: You would have Rogers, Fugett and Fitzpatrick.

By Mr. Schwartz:

Q. Do you have their first names? A. Yes. James Fitzpatrick, Carlos Fugett and Clifford Rogers.

Q. Did you make the decision to discharge them personally? A. I did.

Q. When did you make that decision? A. I made that decision on Monday morning on I think it was the 5th of May.

Q. Fifth of May? A. I think it was.

Q. Could it have been June?

Mr. Loeffler: Is that really a matter at issue? Can we stipulate to that?

Mr. Schwartz: It's not really.

A. June the 5th, 1967.

[314] Q. What steps did you take to notify the persons being discharged? A. They were all given notices that they were discharged.

Q. Immediately following your decision? A. I don't remember that, but it was, you know, within a short period of time.

Q. How long had you had the matter under consideration before arriving at your decision? A. I would say that I had the matter Friday, which would have been Friday, Saturday and Sunday, and Monday I went to Lordstown.

Q. Where were you when the matter was first brought to your attention? A. I think I was in Wilmington, Delaware.

Q. How was the matter brought to your attention? A. Telephone.

Q. From whom? A. From Mr. DeLeo.

Q. Who is Mr. DeLeo? A. He was the safety man.

Q. What's his first name? A. Bob.

Q. How do you spell his last name? A. D-e-L-e-o.

[315] Q. And where was he calling from? A. I don't remember.

Q. What did he tell you? A. That there were some discrepancies in the hotel receipts of certain people at the Lordstown terminal.

Q. Did he tell you how he found out about this? A. Yes.

Q. What did he tell you? A. He told me that he was in the Batavia, New York area and he noticed some

trucks congregated in a parking lot, and when he investigated to see why they were so parked, he noticed that there was a motel some 300 yards away. And in wondering why the trucks were in this parking lot he did go to the motel to ascertain if there were any Anchor guests at the motel. And he started to inquire what did the motel charge when a guest stayed as a single, what did they charge when there were doubles, and he had called the Lordstown terminal and found out that the men were charging a different rate than what the established rate was with the motel.

Q. And all this because he saw some trucks parked in a parking lot? A. No, that isn't what I said. What aroused **[316]** his suspicion is why a truckdriver would park 300 to 500 yards away from a motel.

Q. Were they Anchor trucks that he saw in the parking lot? A. They were Anchor trucks.

Q. Why was he in Batavia, New York? A. He was checking on a couple of dealers for cargo damages.

Q. What was Mr. DeLeo's position with the company? A. At that time?

Q. Yes. A. He was the terminal safety and personnel director.

Q. Is he still with the company? A. He has gone into one of the other Leaseway companies now.

Q. Where is he located now? A. He had been located in Philadelphia, but approximately two weeks ago he received a promotion, he is in charge of the New York area dealing with Sears Roebuck accounts.

Q. What is his business address? A. I don't know that.

Q. Can you find that out? **[317]** A. I think if you were to direct any dispatches to 6 East Trenton Street, Morrisville, Pennsylvania, they would be able to direct you as to where he could be located.

Q. Now, who did Mr. DeLeo say that he had talked to? A. He had talked to a Mr. Pagano.

Q. Who was Mr. Pagano? A. He was a brother-in-law to Mr. Repicci. Mr. Repicci in turn was the owner of the motel. Mr. Pagano served as room clerk, etc., etc.

Q. Did Mr. DeLeo reduce to writing in the form of a report any of the information that he had acquired at Batavia? A. No. He did receive certain documents while he was there, which he made available to me Monday morning when I got to Lordstown.

Q. And what documents were those? A. Number one was hotel registry cards, and an affidavit from Mr. Pagano. He also went into the records and obtained signature sheets that when driver A, B, C comes into the terminal and he tenders to the dispatcher or the clerk a motel receipt for which he receives reimbursement, that the driver also signs a sheet stating the amount of reimbursement. **[318]** He also obtained copies of the receipts, the motel receipts that the drivers would tender to the dispatch clerks for reimbursement of the money.

Q. And did he present you with all of these documents when you saw him on Monday morning? A. He did.

Q. Did you keep those documents? A. I kept the documents. I did show them to the committee, I showed them to Mr. Abe Schwartz and a gentleman that he had with him, Sanmartino, I told him if he cared to he could have copies of all of this material that we had. And I believe he availed himself to certain documents. I can't with any degree of certainty tell you which ones he took, but he did avail himself to some of those that I invited him to take if he cared to have them.

Q. You offered him Xerox copies of any that he might want, and there were some that he did— A. I'm certain that he took some, I don't know to what extent,

but I told him that he could have any and all copies of it.

Q. Do you have those documents today? A. I do.

Q. Would you produce them, please. A. There is one document there that I did not **[319]** have at the morning of June the 5th which I did make available to Mr. Schwartz that evening and told him that I had in my possession a notarized statement, if he cared to have it that he could be my guest.

Q. Which document was that? A. After leaving the meeting in Lordstown I did charter an airplane and I flew from Youngstown, Ohio, to Batavia, New York. I talked to Mr. Pagano, I talked to Mr. Repicci, and after hearing their statement I asked Mr. Repicci if he would state in notary form what he had told me, and he said, "Fine." There was some notes typed out. I accompanied him to a notary that he knew, some woman at— it at one time had been a service station and it had been remodeled, it was just a little store, she did notarize his signature in my presence. And that statement is also available to you, Mr. Schwartz, from Mr. Repicci.

Mr. Goldfarb: I will let you look at it after I read into the record, and I will give it to you, then you can study it all you want. I'm going to make available to counsel the registration cards and receipts of Mr. Alban, Mr. Hines, Mr. Rogers, the originals are also available for inspection. I'm also making available the company's **[320]** summary of drivers' expenses. Who is that? (Indicating)

The Witness: That's Vincent Mariano and Mr. Hines. (Indicating)

By Mr. Schwartz:

Q. Are these expense sheets all the same or would they be different? A. No, they would be different, because you have—

Mr. Goldfarb: What is this up here? (Indicating)

The Witness: 4/17/61.

Mr. Goldfarb: It must be "'67." The "7" must be off.

The Witness: Yes, you have the originals of it.

Mr. Goldfarb: Yes. Listen, do you want to correct your Xerox there? Apparently the machine didn't take the top of the expense sheet, and mark that 4/17/67. It appears there it looks like it's 4/17/61. The original shows 4/17/67. So correct that. The Xerox cut off the top of the 7 there. All right. Now we are going to give you Partch, Croft—

Mr. Loeffler: I'm short one of the receipts **[321]** I got the Alban, Rogers, Hines.

Mr. Goldfarb: You should have two pages of receipts.

Mr. Loeffler: I only have one.

Mr. Goldfarb: You only have one?

Mr. Loeffler: I have got three pages of expenses.

Mr. Schwartz: He doesn't have Mariano and Hines.

Mr. Goldfarb: I will give you that right now. Now, I mentioned Partch and Croft; right? All right. Now we have got Fugett and Worley. Now we have got Fitzpatrick and Cartwright. Now we have got Alban.

Mr. Loeffler: I need an Alban expense summary, recap.

Mr. Schwartz: For Alban all you have is the receipts, you don't have the registration card.

Mr. Goldfarb: Wait a minute. These are some more receipts here.

The Witness: Yes. There may have been extra receipts, too.

Mr. Goldfarb: There could have been. Do you **[322]** have a receipt for Hines?

Mr. Schwartz: For Hines?

Mr. Goldfarb: Yes. You have got a receipt for Hines. What's the date on that?

Mr. Schwartz: For Hines?

Mr. Goldfarb: Yes.

Mr. Schwartz: I have a receipt for Hines dated 5/22.

Mr. Goldfarb: That's another one.

The Witness: Yes, a different date.

Mr. Schwartz: Off the record.

(Discussion had off the record.)

Mr. Goldfarb: Go ahead, make your request on the record.

Mr. Schwartz: I would request any and all receipts, registration cards, records of expense, payments or accounts upon which Mr. Sandy relied in making his decision.

Mr. Goldfarb: All right. We are going to give you another receipt for Cartwright. I don't know if you got that yet or not. Excuse me. What did you say you were missing?

Mr. Loeffler: I need an Alban summary sheet. The company sheet shows for 4/29/67, around that period.

[323] Mr. Goldfarb: Those are merely samples. There is no summary sheet for that. Now, do you see if you have a summary sheet—some of this is merely evidentiary for comparison purposes; am I right?

The Witness: Yes.

Mr. Goldfarb: So we are giving you the material that we have got for comparison purposes as well as the material involved in the specific date in question. This is all comparison here. (Indicating)

The Witness: Yes.

Mr. Goldfarb: This is comparison. (Indicating)

The Witness: Yes. See, the price of the room was $7.28.

Mr. Goldfarb: Same room?

The Witness: Same room. Same numbered room. And then they would foolishly use the same room and then put in a bill for a higher amount when there had been no increase in the room rate.

Mr. Goldfarb: I see what you are doing there. Well, then, a lot of this is just comparison?

The Witness: Yes.

Mr. Goldfarb: Now we have got Alban, Hines, Crawford, receipts and registration. **[324]** Who are you missing. These are comparisons; do you want them? They are comparisons to what they actually claim they were charged to other dates where they occupied the same rooms.

Mr. Schwartz: Yes.

Mr. Goldfarb: You want them?

Mr. Schwartz: Yes.

Mr. Goldfarb: What are you missing?

Mr. Schwartz: I have nothing on Worley.

Mr. Goldfarb: I'm sure we have it.

The Witness: I think that was the first one he gave you.

Mr. Goldfarb: That's what I thought. If you haven't got it we will give it to you.

Mr. Loeffler: It's supposed to be in with Fugett and Worley.

Mr. Goldfarb: Oh, is it in with that?

Mr. Loeffler: Yes.

The Witness: Look at the bottom of my pages, you will find it.

Mr. Schwartz: Yes, I think I do have Worley here. Is the one you are referring to, Dave, 5/10/67 with Fugett?

Mr. Loeffler: Yes.

Mr. Schwartz: Yes.

[325] Mr. Goldfarb: Is 5/10 the date, then, on that?

Mr. Loeffler: Yes.

Mr. Goldfarb: He has got it here.

Mr. Loeffler: There is two of them, they are both signed.

Mr. Goldfarb: Here is Alban, Hines and Crawford.

Mr. Loeffler: It takes no genius to see that three persons signed this one. There are three different handwritings on that piece of paper.

Mr. Goldfarb: This is Fitzpatrick and Cartwright. (Indicating)

Here is Worley and Fugett. (Indicating)

Mr. Schwartz: I have got that. That's only one.

Mr. Loeffler: That's all I have got.

Mr. Schwartz: All right. Then I have got it.

(Discussion had off the record.)

Mr. Goldfarb: Let the record show that we are also delivering Xerox copies of the drivers' logs to counsel. I am going to present to counsel copies of a statement signed by Joseph D. Repicci with attachments **[326]** and a copy of a statement signed by Anthony Pagano. Let the record also show that we have given counsel a sworn statement signed by Joseph D. Repicci.

Thereupon, Plaintiffs' Exhibits C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8 and C-9 were marked for purposes of identification herein.

Thereupon, Plaintiffs' Exhibits D-1, D-2, D-3, D-4, D-5, D-6, D-7, D-8, D-9, D-10, D-11, D-12, D-13, D-14, and D-15 were marked for purposes of identification herein.

Mr. Goldfarb: Let the record show that we are giving a set of comparison receipts to counsel.

Thereupon, Plaintiffs' Exhibits E-1, E-2, E-3, E-4, E-5, E-6, E-7, E-8, E-8 and E-10 were marked for purposes of identification herein.

Thereupon, Plaintiffs' Exhibits F-1, F-2 and F-3 were marked for purposes of identification herein.

Thereupon, Plaintiffs' Exhibits G-1, G-2, G-3, G-4, G-5, G-6, G-7, G-8, G-9, G-10, G-11, G-12, [327] G-13, G-14, G-15, G-16, G-17 and G-18 were marked for purposes of identification herein.

Mr. Goldfarb: Let the record show that we are giving counsel a copy of the National Master Automobile Transporters Agreement and Central Conference Area Supplemental Agreement covering Truckaway, Driveaway, and local agreements for the period June 1, 1967 to June 1, 1970.

Whereupon, Plaintiffs' Exhibit H was marked for purposes of identification herein.

(Signature waived.)

Whereupon, at 3:00 o'clock P.M., Friday, October 1, 1971, the deposition was concluded.

Deposition Testimony of Daniel Sandy (Vol. II)

* * * * *

[328] Q. At the conclusion of the October 1st session of this deposition, Mr. Sandy, you were testifying about all of the evidence upon which you relied in making your decision to discharge the plaintiffs and the three other

men for the same cause. You had, at that time, through your attorney, produced those documents upon which you relied.

Mr. Schwartz: Would you please mark this exhibit F-4.

Plaintiffs' exhibit F-4, a letter, was marked for identification.

Q. Additional documents had been produced, which appear to be in the same category, I'm going to hand you what has been marked as exhibit F-4 and ask you whether or not that is also one of the documents upon which you relied in arriving at your decision? A. It is.

Q. Now, do I understand that you have produced, as of now, [329] all of the documentary evidence upon which you relied in arriving at your decision? A. As of what date, Sir?

Q. As of the time you made the initial decision that these men should be discharged, which from your previous testimony, you believed that was approximately June 3rd or June 5th. A. On the date of June 5th, as I recall, my testimony to you, to your interrogation, I made available to the local union, certain exhibits on the morning of the meeting of which you received the minutes. I also said in the afternoon, I did charter an airplane and flew from Youngstown to Batavia, where I received as discussing with both Mr. Pagano and Mr. Repicci, I did receive an affidavit by Mr. Repicci as to what occurred and that affidavit was presented to the conference, and I believe to you.

Q. Well, that was marked as exhibit F-1, is it not? A. Yes, it is.

Q. That has already been produced? A. It was used.

Q. So that all of the evidence upon which you relied has been produced? A. To my knowledge, yes.

* * * * *

[330] Q. So that you did not obtain a notarized statement from Mr. Pagano? A. I did.

Q. Did you talk to him? A. Yes.

Q. What did he tell you? [331] A. He described to me where the drivers stayed in the same room and paid a stipulated amount, and the amount that they had stated to the company was not the amount that he charged.

Q. Did he say this to you in describing a kind of general practice or was he talking about a specific incident which he recalled? A. He was very definite. He was very specific and nothing was left to the imagination. He knew exactly what he was stating, and I did the questioning and he did the answering.

Q. But he was specific about particular men and particular dates? A. Very much, Sir.

Q. Based on his recollection? A. Very much, Sir, and all through the stipulated amount of monies that transferred between the parties.

Q. He told you that he personally took the money and wrote out the registration cards, and signed the receipts for the gentlemen in question, on the dates in question? A. No, Sir. They registered themselves, on their own signature.

Q. And according to Mr. Pagano, who signed the receipts for the motel?

[332] Mr. Goldfarb: Let the record show that the receipts will speak for themselves, as to who signed them. If you are going to examine him from the receipts, you ought to show him copies of them.

Mr. Schwartz: I'm not asking him what the receipts show. I'm asking him if Mr. Pagano told him who signed the receipts for the motel.

Q. Do you recall Mr. Pagano telling you who signed the receipts? A. No, I don't.

Q. Now, showing you copies of the receipts, signed by someone from the motel, and noting that they showed the name J. D. Repicci. Do you recall whether or not either Mr. Pagano or Mr. Repicci discussed with you, whether those were in fact Mr. Repicci's signatures or that Mr. Pagano was authorized to sign Mr. Repicci's name? Do you recall any discussion of that subject? A. He stated that he had Mr. Repicci's authorization to sign Mr. Repicci's signature to those receipts.

Q. And did he tell you that in fact it was he, Anthony Pagano, who signed all those receipts with Mr. Repicci's name? A. I don't remember that he specifically stated that he [333] had done it, but he did state he had the authorization to sign it.

Q. And did he tell you that he signed these receipts in blank, permitting the men to fill them out themselves? A. In certain instances, he did.

Q. And then he filled out no other part of it other than the signature? A. In certain instances, yes.

Q. What about other instances? A. I'm not sure that he stated such.

Q. Do you recall what he stated with regard to any of the particular nights for which the plaintiffs were fired? A. He did state to me that the amounts that were reflected on the receipts, were not the same amounts that he received from the drivers.

Q. Did he state whether this was because he gave the driver inflated receipts or because the driver noted an erroneous amount on the receipts themselves?

Mr. Goldfarb: I'm going to object to the form of the question, "the driver noted an erroneous amount." An erroneous amount from what?

Mr. Schwartz: Let me rephrase the question.

Q. Do you recall whether Mr. Pagano told you whether the [334] higher amounts on the receipts than

was shown on the registration cards, was due to the fact that he wrote it out that way, or on the other hand, to the drivers writing an amount higher than the registration cards on the receipt? A. No, he did state that the amounts reflected in the receipts were not the same that he received or had charged the men.

* * * * *

[335] Q. Why after examining the evidence produced by Mr. Dalio and arriving at the decision and implementing that decision to discharge the men, did you make another trip to Batavia to check the records? A. Number one, I wanted to interrogate both gentlemen personally, and I felt that maybe to be as objective as possible, that I should check into it.

Q. Did you think there was any room for doubt before you went up there? A. Not a degree, but I still wanted to assure myself.

Q. Did you have any reason to doubt the credibility of Mr. Dalio? A. None whatsoever.

Q. What is it that needed reassurance as far as **[336]** you were concerned? A. I wanted number one, I wanted to see the motel. Number two, I wanted to personally talk to Mr. Pagano and Mr. Repicci. I wanted to see the physical location of where the parking lot was, that aroused Mr. Dalio's suspicion in the first incident, and I wanted to ascertain for myself what the facts were.

Q. Do you initially visit the scene of incidents that resulted in the discharge of any of your employees? A. Yes, quite often.

* * * * *

[337] A. I did have the man's notarized statement, and I did have the registration. I did have their asking the company for these moneys, and I thought that that was prima-facie, whether my interpretation was wrong,

it was subjected to the conference, who sustained my suspicions, Mr. Schwartz.

Q. Did you conduct any other investigation into the reliability of Messrs. Pagano or Repicci? A. I did not to the extent that I—yes, I did make inquiry. I asked two automobile dealerships in the town, what type of individuals they were. The Buick dealer was an old timer who told me that they were beyond and above reproach, that they were substantial citizens of the community, with this reservation. He knew Mr. Pagano real well and that Mr. Pagano was, in his words, "a solid citizen". Another dealership, I don't recall the name of it, it also ascertained that they were both gentlemen of the first order.

* * * * *

[338] Q. I'll rephrase it. The question is, what was the ultimate results of this meeting? A. The ultimate result was that the men would be put back to work and final disposition would be made before the Joint Auto Transporters Arbitration Committee.

Q. The National Conference? A. The National Conference Automobile Transporters, Joint Arbitration Committee.

Q. Now, was this a proposal of the company or the union? A. No, it wasn't a proposal. This is what I stated we would do. The union did not object. In fact, they said fine.

Q. You proposed it and the union accepted it as a solution of the problem as of that moment? A. Yes.

* * * * *

[340] Q. Do any of the representatives ever sit on panels involving grievances of their own company? A. No.

Q. So that you never sat as a member of the panel in any grievance by or against Anchor Motor Freight? A. Never.

Q. How many representatives appear on each panel? A. Five.

Q. Five from each side? A. Five from each side.

* * * * *

[341] Q. Are there always an equal number of company and union representatives? A. On the panel?

Q. Yes. A. Yes.

Q. Does it ever occur that there is not a majority decision? A. That happened quite often.

Q. What is the next step if the committee deadlocks? A. They have a National Committee, and if it deadlocks at the National, it goes to the arbitration.

Q. If the Central Conference Committee reaches a decision, does it ever go to the National Committee? A. I can't think of any.

Q. The losing party in the Central Conference, doesn't have the right to take it to the National Committee? [342] A. It's final and binding.

Q. Does the Central Conference Committee have any particular rules or procedures with respect to rehearing cases after a decision has once been arrived at? A. To my knowledge, the only reason it can be reopened, is on the basis of new evidence, which must be ascertained by the moving party.

* * * * *

[343] Q. What was the first thing that happened in the procedure of this case? A. I think the Union set forth with their arguments, denying any allegations of dishonesty or theft.

Q. Who spoke for the Union? A. You mean who their chief spokesman was, or who did the speaking?

Q. Who was the first person that talked? A. I think John Angelo was the first one, followed by Abe Swartz, followed by three or four of the committee men

and they were asked in turn if they had anything to contribute and what a few of them said that those who had spoken previously had spoke their sentiments and thoughts as to what had happened.

Q. In the Union Representative's statement consisted of denying dishonesty? A. Yes.

Q. Did they present any evidence in support of their claim? A. I don't recall that they did. They may have, but I don't recall it.

Q. Did they make any explanation other than simply to [344] deny everything? A. No, Sir. They went into minute details, giving testimony to the fact that they were not guilty of any action of dishonesty.

Q. A simple flat statement that they were not guilty? A. No, they went into detail. Some of them spoke highly of their years in the company, what solid citizens of the committee they were. They gave their testimony. Some of them had worked for a number of years, and some of them also were very bitter that the company was punishing them by bringing this false, erroneous allegation against them.

Q. And you had not presented your evidence yet, at this time? A. No. They had been apprised by the meeting at the terminal on the 5th, of what my evidence consisted of. I also apprised them that I had an affidavit from Mr. Repicci that I had obtained on the afternoon of the 5th, and asked them if they wanted to have a copy of it, but they were to be my guest, but they had seen the evidence that I had, yes.

Q. Did any of the Union Representatives make any—give any explanation for your evidence? A. They gave arguments, yes.

Q. What did their arguments consist of? [345] A. Number one, that if guilt was to be placed, it should

have been on Mr. Pagano and Mr. Repicci, that they had received the amount, but they were pocketing it, et cetera.

Q. But they presented no evidence of their own in support of that, other than their own claim? A. I don't recall of any, no.

Q. And at this period, the Union presenting its statements, Angelo, Swartz and some of the committee men spoke? A. Yes.

Q. Even before you had an opportunity to say anything? A. That is correct.

Q. Were you the sole representative of Anchor at this hearing? A. I was.

Q. Were you given the opportunity to cross-examine or ask questions of any of the Union Representatives? A. Yes, and so were all panel members.

Q. Did you, in fact, ask questions of the Union Representatives? A. I don't recall that I did.

Q. Did the panel members ask any questions? A. They did.

Q. Do you recall any of the questions? A. But they were quite extensive. It was quite prolonged. **[346]** I don't recall that I distinctly asked any questions, no.

Q. Now, how long a period of time elapsed while the Union was giving its side of the case? A. Are you talking about the rebuttal, et cetera?

Q. No, their opening presentations. A. Their presentations. I would say exceeded three hours.

Q. Even before you said anything? A. Before I spoke, yes.

Q. Did any of the eleven men themselves speak during this period? A. Yes.

Q. Do you recall which ones? A. I don't recall in particular which ones spoke, but I do know that there were four or five of them, without being repetitious, spoke of their years in the automobile hauling business, where

their records were clean and they had never been involved in this type of case, et cetera.

Q. Do you recall Mr. Alban speaking for himself? A. I don't know Mr. Alban as such.

Q. Do you recall any of the eleven, speaking for themselves and mentioning that they had, in the past, gratuitously returned an overpayment of $20.00 on his expenses to the company? **[347]** A. I don't remember that. I don't remember them as individuals, who spoke. I do know that there were two representing Local 377 on an official capacity. I do know that four or five of the grievants spoke on their own behalf, but were asked individually if they had any contributions that they wished to make. They were also asked before the group went into executive session, this is after all of the arguments were presented, if they felt that they had been properly represented, and had they been given a full hearing and—

Q. Who asked them that? A. I think a Mr. Luchek, who was the Union Representative. They take turns on who's going to be the chairman of the day, and either one or the other asked. I don't want to go on record as to who did that, but one of them asked if they had felt that they had been properly represented and if they felt that they had been given a full hearing with sufficient and ample time to present all of the facts to the panel.

Q. And who answered that question? A. They did, those who were present individually, stated that they had been given ample time and that they had been properly represented by their union.

Q. Now, after the three hours or so of Union's statements, did it next become your turn? **[348]** A. It did.

Q. And what did your presentation consist of? A. Of the hotel receipts, the registration cards, the logs, the logs from the terminal showing that they signed for the monies. Also, their receipts showing that they had signed

for and received the monies. If I remember correctly, I vented my feelings on dishonesty to both groups at quite some length.

Q. That you were opposed to it? A. I am.

Q. How long did your presentation take? A. I quite belabored the fact that there was no room for dishonesty in any industry, and I think I may have bored them, and when I saw the boredom setting in after forty-five minutes, I rested with the right of rebuttal.

Q. Now, were you asked any questions? A. I was.

Q. By whom? A. By members on both sides of the house.

Q. Members of the committee, you mean? A. Yes.

Q. What questions were you asked? A. I don't recall the questions. One of them wanted me to define the difference between dishonesty and theft. **[349]** Some of them tried to play lawyer. Some of them wanted to play with questions of semantics as to different definitions. Some of them wanted to know if it was entrapment. One of them asked me why I hated this group, psychological questions, you know. Questions like did you love your mother. When you say yes, then you must of hated your father. These boys are quite psychological. There were questions asked.

Q. These are members of the committee? A. Yes.

Q. Did any of them ask you if in fact your evidence was not equally susceptible to the conclusion that Pagano and Repicci had pocketed the difference rather than the eleven drivers? A. I don't think they put it as directly as you are, but I think that some of them adverted to that fact, yes.

Q. How did you respond to it? A. Negatively. I don't have any reason to doubt either Pagano or Repicci.

Q. Did you state that you had any reason to doubt any of the eleven men apart from the evidence which you presented? A. Outside of one of dishonesty, yes and theft.

Q. But all part of the same incident? A. And I also stated that I knew of people who had gone **[350]** thirty years as solid citizens, but all at once they arose some morning and robbed a bank. For what reason, only they know, but they were guilty of outright dishonesty and theft, in my opinion.

Q. Did any of the eleven men present, ask you any questions? A. I believe two or three did, yes.

Q. Do you recall which? A. No, I don't.

Q. Do you recall what questions the two or three asked? A. I think one or two wanted to know what form I used to get the statements. One wanted to know to what extent of bribery did I go to get the statement, and that type of questioning.

Q. But the total period during which you made your initial presentation lasted about forty-five minutes? A. Yes.

Q. What followed your forty-five minute presentation? A. Then the Union had rebuttal.

Q. And what did the Union's rebuttal consist of? A. I no longer remember what they rebutted, but in essence they, too, would bring disdain and dishonesty upon Mr. Repicci and Mr. Pagano. They questioned the motives of the company. They thought that we were being too severe and they thought that there should **[351]** be some compromise with thievery.

Q. But they presented no rebuttal evidence to your documentary evidence? A. You mean in exhibit form?

Q. They presented no new witnesses or documents that hadn't been present in their initial presentation? A. No, it was more or less rebuttal.

Q. Either in their initial or rebuttal presentation, did they present a single document? A. No, not that I remember.

Q. Nor did they present a single witness other than themselves? A. No.

Q. Okay. A. And their Union.

Q. Now, how long did the Union's rebuttal last? A. I would say half-an-hour.

Q. Who made the Union rebuttal, do you recall? A. I don't recall who did, but again, Mr. Angelo and a couple of—I'd say three or four of the grievants were involved. Mr. Swartz, he didn't know what the word, rebuttal, meant. He kept saying that we had no case, and this was his rebuttal.

Q. Did he explain why all of this evidence you produced amounted to no case? **[352]** A. No, because he said that this wasn't thievery nor was it dishonesty. He and the committee didn't think that it was this form of dishonesty to merit a discharge.

Q. I see. His position was not that you hadn't proven that they cheated— A. No, I didn't say that. He stated that we hadn't proven it, that if this stain of guilt were placed upon these people, it would be difficult for them to go out and obtain employment, that this was a very severe type of stigma, that you can attach to a man's name, that no trucking company wanted a thief on their payroll, et cetera, and that we didn't prove that the documents did prove thievery. It did not prove even theft during working hours. They went on quite some length on this.

Q. Now, what happened after the Union rebuttal? A. Then it became my turn to rebut.

Q. And what did your presentation consist of? A. Again, the evils of dishonesty and also that I thought I had proven quite conclusively that these men had become involved in thievery and dishonesty.

* * * * *

[353] Q. What happened after your rebuttal? A. Then, as I stated previously, they asked if the Union felt

or the grievants were asked if they felt that they had been given a full hearing, had they been well represented by their Local, words to that effect. They said that they had. For some reason unknown to me, they failed to ask me.

Q. Did you have an opinion on that subject? A. No, I thought that they had been given sufficient time. I was well pleased with the time.

* * * * *

[354] Q. Now, after the men were asked whether they felt they had had a full hearing and so forth, what happened next? A. Then the parties were excused while the panel went into executive session.

Q. What does executive session consist of? A. This is all parties with the exception of the ten panel members, must vacate the premises.

Q. Where did you go? A. They have two rooms that the parties go to, and you go to them and wait for them to call for the next case.

Q. Does the panel deliberate or do they hear more cases? A. They deliberate on this type of case, they deliberate immediately.

* * * * *

[355] Q. Now, how long were you out of the room for the deliberation of the panel? A. I would say it was a good two hours.

* * * * *

[356] A. The rule is that you get the answer by mail.

Q. How did you come to learn of the outcome? A. I think I received—either I or the Lord's Town Terminal, received notice of the decision. I don't know when, but it was a day or so after the conference was adjourned.

* * * * *

[357] Q. The fact that a majority was mustered to uphold the discharge, necessarily means, does it not, that one or more of the Union Representatives had to vote against the grievance?

Mr. Goldfarb: Objection. **[358]** I think he testified that he didn't know what went on or how the voting went.

A. I would say from the mathematical calculation, he's right.

Mr. Goldfarb: It could conceivably have been the employers, too.

A. Oh, yes.

Mr. Goldfarb: It could have been the other way around.

Q. Would you have something you'd like to ask? A. There is no way to ascertain the mathematical calculations as to how many from the employers or who from the Union's side, arrived at the majority. Dave, is that properly put?

Q. Did you have occasion to consider or discuss the cases of these eleven men following the decision of the conference committee on the 26th or the 27th? A. You mean after the case was heard?

Q. Yes, after you received the results, what was the next time, if any, that you thought about or had occasion to deal with the matter at all? A. After the decision was sent out, I think I did receive a call from the Local Union, wanting to know if the company would or could relent and put these men back to work.

[359] Q. Do you recall who that call was from? A. I believe, Abe Swartz called me. He also made overtures to the terminal manager.

* * * * *

Q. What was your answer to him? A. Negative. There was no compromise. He used all of the arguments that he could muster, moral persuasion et cetera. He questioned my religious doctrines, such as don't you believe in forgiving and forgetting. I told him there was no compromise. He also got very sarcastic, but I won't go into that. He said I had ice water in my veins.

[360] Q. In all your years as a member of the conference committee and sitting on panels, has it ever been your experience that grievants are represented by lawyers? A. You mean at the hearing?

Q. Yes. A. I have never heard a lawyer present a case at the conference, no.

* * * * *

[361] Q. Now, what was the next thing that happened after you received this call from Mr. Swartz and answered in the negative? A. Mr. Swartz then informed me that he had scheduled a hearing or he had scheduled a meeting with Mr. Fitzsimmons.

Q. What did you say to that? Was this in the same phone conversation? A. No, this was in a separate one. I told him, at that time, that I didn't see the necessity of the meeting, but I would make myself available for it.

Q. He scheduled a meeting with Mr. Fitzsimmons which he wanted you to be present? A. I don't know if he scheduled the meeting at the time, **[362]** but he told me there was a meeting to be held.

Q. And did you happen to meet with Mr. Swartz and Mr. Fitzsimmons? A. I did so attend the meeting.

Q. Where was this held? A. In Washington, D. C.

Q. When? A. I don't recall the date.

Q. Before the second hearing in this case? A. Yes.

Q. And what happened at that meeting? A. Mr. Fitzsimmons wanted to know the purpose of the meeting, and Mr. Swartz told him.

Q. What did he tell him? A. Number one, that he wanted him to intercede on behalf of the Local to get these men back to work.

Q. And what was Mr. Fitzsimmons' response to that? A. At that time, my position was that the contract was quite specific, that the decision was final and binding, and if we had spent a lot of time, a lot of money to build up the grievance procedure, and that the company did follow the grievance procedure as outlined. I thought that if we were going to preserve the sanctity of the instrument, that the decision should go as announced by the committee.

[363] Q. What did Mr. Fitzsimmons say to that? A. Mr. Fitzsimmons pretty much took the same position of Pontius Pilate. He washed his hands of the whole affair, stating it was a local matter. It was a conference matter, and that the International had nothing to do with it, and that he had reservations about the hardness or the callousness of Mr. Sandy, but he thought that that was a local affair and that the International had nothing to do with it.

* * * * *

Q. Was there any discussion of a re-hearing? A. Mr. Swartz stated that he was going to ask for a re-hearing.

* * * * *

[364] Q. What was the next you heard about this matter, after your meeting with Mr. Swartz and Mr. Fitzsimmons? A. I received a copy of the October Agenda, and I noticed that the case was rescheduled for re-hearing.

* * * * *

[365] Q. Now, the document reported a request for a hearing based upon new evidence. Did you make an effort to find out what the new evidence was? A. I did ask.

Q. Who did you ask? A. I asked Mr. Swartz.

Q. What did he answer? A. He told me he was loaded for bear.

Q. Did he tell you anything else? A. No, he did say that he was loaded for bear and it was going to be a different ball game, that he had the necessary material.

Q. In fact, he did not tell you what the new evidence was? A. He refused.

* * * * *

[366] Q. Do you recall who was present for the Union or the men? A. I don't recall who was present. You will note on my notes going to the minutes or just my ramblings, it started at 9:20 A.M. on October the 26th. Present, were the grievants, Craft, Cortch, Worley, Mariann and Rodgers, and somebody who was designated as an attorney, but wore no badge or produced any credentials.

* * * * *

[367] Q. What was the first thing that happened at this proceeding? A. At that time, the Union stated that they had an attorney. This is after they had empanelled the panel to hear the case on the basis of re-hearing, and stating that the re-hearing would be based on new evidence that was to be produced. Mr. Angelo introduced an attorney. I don't remember his name, and the committee told him that the attorney could advise, that he could be there, but he could only listen and someone else would have to present the case for them.

Q. Mr. Angelo spoke for the Union? A. Mr. Angelo did.

Q. Is there any particular reason why you did not record [368] his name as one of those present at the top of your notes? A. No, I couldn't give you the reason why I didn't.

Q. There's no question in your mind that he was there? A. He was there.

Q. And that he spoke for the Union? A. Yes, also Mr. Swartz was there.

Q. Now, what did Mr. Angelo do after he was advised that the attorney could not present the case? A. He distributed what looked to me like a very important document, consisting of some one hundred pages. He distributed it to about half-a-dozen of them. He failed to give me a copy, and he started with that document.

Q. He distributed the one hundred page document? A. I would say what purports to be a one hundred page document.

Q. Who did he distribute them to? A. The committee.

Q. Did he say what that document was? A. He stated that this attorney had gone to Batavia and had got this affidavit from Mr. Repicci. It was Mr. Repicci or Mr. Pagano.

* * * * *

[369] Q. Mr. Sandy, I'm going to hand you what has been marked as Plaintiffs' exhibit J-5. I will ask you if that is the document which you referred to, that Mr. Angelo distributed to everybody but you. A. No, I didn't say that. I said he distributed half-a-dozen copies, of which I was not one of the recipients.

Q. Is that the document that you were referring to? [370] A. Yes, I think it is. I have no reason to doubt it. When it was presented it was bulkier.

Q. So your one hundred pages was a rough estimate? A. Very rough.

* * * * *

[371] Q. What happened after the Union made its hour-and-a-half presentation? A. Then they asked the company to state their position.

Q. Did you state the company's position? A. I did.

Q. What did you state? A. I told them there was nothing new introduced, that it was repetitious that they had covered the same area. The only thing new was the attorney. He didn't make any contributions. There was nothing new stated.

Q. That was your position for the company, that you stated? A. Yes.

* * * * *

[372] Q. How long did you talk? A. I would say it wasn't more than fifteen or twenty minutes at the most.

Q. Did you explain why you did not regard this as new evidence? A. Yes, because I didn't feel that it was.

Q. Had it been produced at the first hearing? A. The arguments had been presented.

Q. But had the affidavit of Repicci been produced at the first hearing? A. No.

Q. What was there about it that caused you to believe it wasn't new, since it hadn't been produced at the hearing? A. I stated that the contents were not new, because they had taken the same position at the original hearing.

Q. And did you argue then, that they should not be granted a new hearing? A. I did.

Q. So that that proceeding was not, in fact, a re-hearing, but a proceeding to determine whether or not to get a re-hearing? A. That is correct.

[373] Q. Were you questioned by anyone? A. I don't remember.

Q. What happened after you talked? A. I believe there was time allotted for rebuttal.

Q. Did anybody make a rebuttal? A. There was three or four of the grievants in the case, who made some statements.

Q. Do you recall what they said? A. No.

Q. Then how long did their rebuttal last, do you recall? A. Not very long. I'd say just ten or fifteen minutes at the most.

Q. What happened after that? A. They went into executive session.

Q. And did you and the Union representatives leave the room? A. We departed the premises and we were called back, and if my memory serves me correct, they read into the record that by unanimous decision that the re-hearing was denied on the basis that there was no new evidence produced.

* * * * *

[374] Q. Did you subsequently receive any written notification of that outcome? A. We received the minutes in due time. I think it was a few days after the hearing had been concluded. It was a customary practice that where there is—where the hearing is denied, that it's read right into the record to the parties.

* * * * *

[375] Q. What was the next thing that happened, with regard to the discharge, following the disposition of the question of re-hearing? What was the next thing that happened, to your knowledge, pertaining to the discharge of the eleven men and proceeding that arose out of it? A. Number one, I think there was unfair labor practice charges, but when they came into the picture, of course, I dropped out. I didn't pursue those.

Q. Unfair Labor Practice Charges were filed? A. I believe they were.

* * * * *

[376] Q. Showing you what has been marked as Plaintiffs' exhibits K-1 through K-8, Mr. Sandy, I will ask you if that is the Unfair Labor Practice Charge to which you referred in your answer to the last question? A. It is.

Q. Did you receive this document when it was filed or a copy of it? A. It would have come through my office, yes.

Q. And what did you do then? A. I placed it in the very capable hands of Goldfarb for disposition.

Q. You're referring to Bernard S. Goldfarb, attorney at law, are you? A. I am.

Q. And did you have any further connection with the matter of the Unfair Labor Practice Charge? A. None, outside of furnishing Mr. Goldfarb with the information that I had relative to the exhibits, et cetera.

* * * * *

[377] Q. Now, to your knowledge was any additional information or evidence submitted to the Labor Board in this proceeding, other than the documents which I've already shown you? A. None that I know of, Mr. Schwartz.

Q. Now, following the conclusion of the proceedings related to the Unfair Labor Practice Charge, was there an additional occasion for this matter to be brought to your attention? A. I don't recall at what time the Unemployment Compensation Cases were filed, but again, that was handed over to Mr. Goldfarb's office.

Q. At some point subsequent to the October 26th hearing, applications for unemployment compensation were filed by the discharged parties? A. Well, there were claims made, yes.

Q. Do you know how many of the eleven made such claims? A. No, no I don't.

Q. Returning for a moment to the Unfair Labor Practice Charge, was there ever, to your knowledge, any hearing held on the Unfair Labor Practice Charge? **[378]** A. I don't know.

Q. To your knowledge, there was none? A. There were no hearings held, as far as I was made apprised of.

Q. Does your office have any responsibility for responding to applications for unemployment compensation? A. No, depending upon the weight of my schedule, I have attended unemployment compensation hearings from time to time, but I would say most generally, those are turned over to the attorneys for their disposition of it.

Q. Did you have occasion to have any involvement in any of the unfair—excuse me, unemployment compensation proceedings relating to any of these eleven drivers? A. I may have, but I don't remember. I did attend some unemployment compensation hearings in the Warren, Ohio office, concerning some people out of the Lord's Town Terminal, but as to what the facts surrounding those cases were, I have no memory of them.

Q. Do you have any of the documents pertaining to those cases or any notes from which you could refresh your recollection?

Mr. Goldfarb: For purposes of the record, I have the documents pertaining to the unemployment compensation proceedings, which **[379]** are available now for counsel's inspection and copying.

Mr. Schwartz: All right. If we could take a brief recess while I inspect them. It probably will not be necessary to copy them all.

Mr. Goldfarb: Okay. Let's go on a recess, now.

(Short recess)

Mr. Schwartz: Would you please mark these Plaintiffs' exhibits L-1 through L-3.

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[380] Q. Did you read the Repicci Deposition taken by Rocklan (?) in October of that hearing? Did you get a chance to read it while the thing was going on? A. No, I made some notes while Mr. Angelo was reading it. I had an opportunity to read it afterwards, but I didn't.

Q. Did Angelo read that thing verbatim? A. Verbatim, as I understand it.

Q. Based on your recollection, did Angelo or any of the other Union guys that read the deposition, but then, did they say well, like what he said here on such and such a page in the deposition, what he said in the affidavit. Did they go through that kind of a process? A. They did emphasize certain points that were made in the deposition, as Mr. Angelo read it. There were remarks about it.

Q. Just so you don't misunderstand me. They didn't point-up contradictions between what Repicci had said on your evidence and what he said in the deposition taken by their lawyer? A. Yes, Sir.

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EXCERPTS OF TRIAL TESTIMONY IN SCOTT VS. ANCHOR MOTOR FREIGHT, INC. AND TEAMSTERS LOCAL UNION NO. 377, U.S. D.C., N.D. OHIO, NO. C68-252; 6th CIR. NO. 73-1703, 1705.

Trial Testimony of Walter Reedy

[387] Q. Do you remember Angelo saying some pretty strong words to the men? A. Right.

Q. Telling them, "You Norwood guys can't take over my local"? A. Yes, that's right.

Q. And you had heard him refer on many occasions to the Norwood men as hillbillies? A. Right.

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EXHIBIT 1*

[404] UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer—Anchor Motor Freight, Inc.

b. Number of Workers Employed—app. 130

c. Address of Establishment (Street and number, city, State, and ZIP code)—Hallock-Young Road, Lordstown, Ohio

d. Employer Representative to Contact—E. E. Babiasz

*The exhibit numbers herein, as well as the page numbers shown in brackets, are those of the duplicated Appendix as filed in the court below.

e. Phone No.—824-2565

f. Type of Establishment (Factory, mine, wholesaler, etc.)—truck terminal

g. Identify Principal Product or Service—hauling of automobiles

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) (3) (5), of the National Labor Relations Act, and these unfair practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

a. On or about February 10, 1967, and at numerous times in the six months preceding the filing hereof said employer by its officers, agents or representatives has issued warnings, suspensions and has taken other disciplinary action and has threatened its employees as listed on Schedule B attached hereto, because of partaking in activities protected under Section 7 of said Act.

b. For the six months preceding the filing hereof said employer by its officers, agents or representatives has refused to bargain collectively in good faith with its employees concerning pay, hours, other working conditions and grievances.

c. On or about February 20, 1967, said employer discharged its employees as listed on Schedule B attached hereto because of their concerted protected activities, and has refused and refuses and does now refuse to reemploy said employees except on conditions violating the right of said employees to engage

in protected concerted activities and to bargain collectively and has refused altogether to reemploy some of said employees because of their protected activities.

d. Since on or about February 20, 1967, said employer has refused to bargain collectively with its employees concerning employment, working conditions, grievances and to give information concerning grievance claims.

(Continued Schedule A)

3. Full Name of Party Filing Charge—William N. Letson, by and for the employees listed on Schedule B.

4a. Address (Street and number, city, State, and ZIP code) c/o Letson, Letson & Griffith, 106 East Market Street, Warren, Ohio 44481

4b. Telephone No. 399-5718; 399-5719

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ William N. Letson
Address 106 East Market Street
Warren, Ohio 44481
399-5718; 399-5719
Attorney as agent for the employees listed on attached Schedule B
February ...., 1967

[405] Schedule A to Charge Against

Anchor Motor Freight Inc. (Lordstown Terminal)

e. For the six months preceding the filing hereof said employer has interfered with the administration of Local 377, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, a labor organization, by contributing financial and other support to one or more officers thereof and by acting in concert with one or more officers of said labor organization to deny its employees the right to bargain collectively and engage in other protected concerted activities.

[406] Schedule B to Charge Against

Anchor Motor Freight Inc. (Lordstown Terminal)

Employees on behalf of whom charges are filed:

Lindsay Worley
3312 Red Fox Run Drive
Warren, Ohio

Walter Reedy
18140 Lillian Drive
Lake Milton, Ohio

Graydon Croft
4193 New Road
Youngstown, Ohio

Robert Killing
400 Roosevelt Avenue
York, Pennsylvania

James Huggins
3770 Seneca Street
Stowe, Ohio

and all other employees of Anchor Motor Freight Inc. who are truck drivers or mechanics at its Lordstown, Ohio terminal.

EXHIBIT 2

[407] A Public Notice from Anchor Motor Freight Drivers

Lordstown, Ohio

Because the equipment at Anchor Motor Freight is unsafe for us to drive, and also it is unsafe to the general public, for this equipment to be on the streets and highways of this area, we are on a strike. We are not asking for more money or any other financial benefits from A.M.F. We are out because of unfair labor practices, and refusal of Teamsters Local 377 to represent us, besides the danger of A.M.F.'s equipment to the general public. We need contributions to continue our fight for our rights and your safety and good unionism. Contributions can be sent to P.O. Box 721, Warren, Ohio.

Anchor Motor Freight Drivers Committee

Graydon Croft
Committeeman
4193 New Road
Youngstown, Ohio

Jack Patton
24 Jay Street
Newton Falls, Ohio

EXHIBIT 3

[408] Local Rider to the Automobile Transporters Central Conference Area Governing the Actions of Truckaway, Driveaway, and Terminal Employees

March 1, 1964—June 1, 1967

TRAILER-DRIVERS

UNION: TEAMSTERS LOCAL 377
YOUNGSTOWN, OHIO

COMPANY: ANCHOR MOTOR FREIGHT, INC.

TERMINAL: LORDSTOWN, OHIO

A. It is agreed that employees working in the Classification of trailer drivers shall, as of starting date of employment, work in accordance with the hours, wages, and working conditions set forth in the 1964-1967 Central Conference Area Truckaway, Driveaway, Yard and Shop Agreement.

B. Yardmen seniority shall be determined by the time and date each employees earnings begin as of his last hire-in date. Yardmen shall not bump into any other classification nor shall any employee from another classification exercise seniority in the yard division.

C. Vacation shall be taken to receive pay. If a man does not take his vacation during the year he must take his vacation during model change. Employees shall receive vacation pay at the time of going on vacation. The number of employees who may take a vacation at one time will be determined by the company and the employees will bid by seniority.

D. *Dispatch*

1. Starting Time:

(a) There will be two dispatches each scheduled working day. The starting time will be 5 A.M. and 5 P.M.

(b) Drivers will be scheduled in their seniority order in groups of 15 Minute Intervals. The sizes of each group will be determined by the company in order to dispatch the drivers as quickly as possible according to economics and equipment and dock space availability.

[409] (c) In notifying drivers of schedule changes, the Company shall be required to make local telephone calls only within a twenty mile radius of the Lordstown terminal. The company shall not be responsible to contact any employee if the employee does not have a telephone. The Company will telephone collect, those who live outside the twenty mile radius.

2. Old Loads, Rush Loads and Daylight Deliveries

(a) The most junior men in each dispatch will be dispatched by the Company in order to clean up the old dates and day-lite deliveries daily.

(b) When rush loads are required to be shipped they must be dispatched first. Such loads will be dispatched to the most junior drivers available at the dispatch window at the time of such requirement, unless a more senior driver, available at the dispatch window, desires such load.

(c) Drivers shall not report for work at their home terminal until they have had 8 hours off-duty

time and must report for next dispatch if he has had 12 hours off.

(d) All available loads to be shipped at each dispatch will be in the pick at the start of the respective dispatch with the exception of short loads (up to 81 Miles), which may be added in order to fill out a driver's tour of duty or for available drivers who are starting a tour of duty when there are no other loads to pick from.

(3) Drivers coming off a sleeper or partial assignments:

(a) No driver coming off a sleeper will be permitted to pick a sleeper to fill out his tour of duty.

(b) Drivers coming off a sleeper will have the option of completing their tour of duty.

(c) Drivers returning from a sleeper or partial assignment while a pick is in progress will not be permitted to interrupt the pick in process.

[410] 4. Short Trips:

(a) If a man starts short, he must complete his tour of duty on short loads. A man will not be required to take a load if he has 8 hours working time in.

5. Types of Equipment:

(a) To maintain maximum utilization of equipment, the Company reserves the right to pooled equipment.

(b) Drivers must pick a load that will fit on the available equipment at the time of his pick. The Company will issue the equipment which will be posted.

6. Drivers must return the equipment directly to the terminal after the completion of each tour of duty and any defective equipment must be reported at that time.

7. Drivers, if required to load the equipment or if the equipment is loaded by employees other than drivers, shall be responsible to deliver the motor vehicle as described on the applicable Bill of Lading. Should the driver tender motor vehicles other than described on the Bill of Lading, it shall be his responsibility to return same to the point of origin at no additional expense to the Company.

8. Return of Motor Vehicle Damaged by Driver—If a delivery is refused because of damage due to the driver's negligence then the driver will return that part of the load to the Company Terminal without compensation.

9. Outside Equipment;

It is agreed that not more than 20% of the available loads will be held out of the pick for outside equipment, and these loads will be available only to terminals who will make similar type loads, available to the Lordstown Terminal.

10. Outside terminals will have the right to pick available loads from the pick after the 5 A.M. dispatch has been completed and after the 5 P.M. dispatch is completed providing there are loads available for all men on the Lordstown Terminal Seniority List.

[411] 11. Necessary Changes:

(a) It is mutually understood and agreed that certain changes in the foregoing may be necessary from time to time to take care of an emergency or to accomplish the basic principles intended.

12. When there is Saturday or Sunday work that will not require the whole active seniority list, that is, men working regularly, the most junior men will be required to work if the more senior men do not want to work.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals this Mar. 27, 1967.

Teamsters Local Union No. 377	Anchor Motor Freight, Inc.
/s/ John J. Angelo	/s/ R. C. Knapp
/s/ W. Reedy	/s/ E.V.P.
/s/ Graydon Croft	
/s/ Robert Killing	
/s/ Lindsay Worley	
/s/ J. Huggins	

[412] Supplement—Local Rider to the Automobile Transporters Central Conference Area Governing the Actions of Truckaway, Driveaway, and Terminal Employees

March 1, 1964—June 1, 1967

TRAILER-DRIVERS

UNION: TEAMSTERS LOCAL NO. 377, YOUNGSTOWN, OHIO

COMPANY: ANCHOR MOTOR FREIGHT, INC.

TERMINAL: LORDSTOWN, OHIO

The following Truckaway mileage four car rates shall be in effect at Lordstown, Ohio for the period from March 1, 1966 to June 1, 1967.

Miles	3-1-66 to 6-1-67	Example 6 Car Rate
1-5	$3.60	$ 7.75
6-10	4.20	8.50
11-15	5.05	9.50
16-20	5.90	10.50
21-25	6.75	11.50
26-30	7.60	12.50
31-35	8.45	13.50
36-40	10.30	15.50

The mileage rate for delivering of six cars to the east side of Cleveland shall be $19.50. The mileage rate for delivery of six cars to west side of Cleveland shall be $20.50.

The mileage rate for delivery of six cars to east side of Pittsburgh shall be $25.50. The mileage rate for delivery of six cars to west side of Pittsburgh shall be $23.50.

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals this Mar. 27, 1967.

* * * * *

(Signatures on behalf of Teamsters Local Union No. 377 and Anchor Motor Freight, Inc. omitted in printing.)

[413] Pittsburgh

East Side	*West Side*
Constantin Pont.	
Brown Motors	
Downtown Motors of Pitts.	
Book Cheve.	
Joe Hoebler Cheve.	
Don Allen Cheve.	
Kenny Ross Cheve.	
Homestead, Pa.	Bellvue, Pa.
Squirrel Hill, Pa.	McKees Rocks, Pa.
Penn Hills, Pa.	Carnegie, Pa.

EXHIBIT 4

[414] UNITED STATES DISTRICT COURT
Northern District of Ohio
Eastern Division

Case No. C67-870

WILLIAM WHITTEN,
Plaintiff,

vs.

ANCHOR MOTOR FREIGHT, INC., *et al.*,
Defendants.

Case No. C68-252

WILLIAM SCOTT,
Plaintiff,

vs.

ANCHOR MOTOR FREIGHT, INC., *et al.*,
Defendants.

Defendant Anchor Motor Freight, Inc.'s Answers to Interrogatories

Defendant, Anchor Motor Freight, Inc., by Daniel L. Sandy, who is the Director of Labor Relations, being first duly sworn and authorized, says that the following answers to plaintiffs' interrogatories are true as he verily believes:

INTERROGATORY NO. 1

State the names and last known addresses of each employee of the company who was employed by the com-

pany at Norwood, Ohio, and subsequently was re-employed by the company at Lordstown, Ohio, during the years 1965 and 1966 (hereinafter referred to as "ex-Norwood drivers").

ANSWER: Fifty-seven Norwood men re-employed.

Walter Reedy, 18240 Lillian Drive, Lake Milton, O. 44429

Floyd Hatcher, R.F.D. #1, Newton Falls, O. 44444

Jack Patton, 438 Featherwood Dr., Harrison, O. 45030

John R. Jones, 1554 W. Loveland Ave., Loveland, O. 45140

George Mead, Box #1121, Warren, O. 44400

John Bresser, 7 Bustetter Dr., Florence, Ky. 41042

Chester Hammell, R.F.D. #1, Lynchburg, O. 45142

Lotion Yarber, 7001 Clough Pike, Cincinnati, O. 45244

Earl Wilson, 10781 Sharondale Rd., Cincinnati, O. 45200

Michael Geraci, 5755 Nightingale Ct., Cinn., O. 45227

William Wisser, 513 Maple Dr., Reading, O. 45215

William Chamberlin, 4062 Glenbar Ct., Cinn., O. 45236

Harold Wesley, 5230 Carthage Ave., Norwood, O. 45212

Edward Vickery, 17 Thrush Dr., Lake Milton, O. 44429

Samuel Reed, 1686 Hudepohl, Cincinnati, O. 45200

Charles Thompson, 2608 LaGrande, Huntsville, Fla. 35800

Cecil Gregory, 5145 Sterling St., Youngstown, O. 44500

Donald Cornett, 7795 Jolain Dr., Montgomery, O. 45242

Frank Battreall, 3824 Elljay Dr., Sharonville, O. 45241

Henry Winburn, Dixie View Trailer Ct., Erlanger, Ky. 41018

Clyde Durham, 5207 Hunter, Norwood, O. 45212

John Hughes, 1441 E. McMillen Ave., Cincinnati, O. 45200

Garrett Combs, 9 Thrush Dr., Lake Milton, O. 44429

Robert Hall, 1826 Yorktown Rd., Cincinnati, O. 45200

John DeVore, R.F.D. #1, Box #10, North Jackson, O. 44451

George Ottley, 1793 Yorktown Rd., Cincinnati, O. 45200

Austee Tucker, 3564 Harrow Ave., Cincinnati, O. 45200

William Scott, 25 Toni Terrace, Ft. Thomas, Ky. 41075

Berry Woodall, 3928 Lindley Ave., Norwood, Ohio 45212

Eugene Thatcher, 5371 Shelbourne Dr., Cincinnati, O. 45200

William Whitten, R.F.D. #1, Overlook Dr., Milford, O. 45150

Robert Chitwood, 808 Kenridge Dr., Ludlow, Ky. 41016

Francis Ball, 6907 Roe St., Cincinnati, O. 45200

Arthur Ritchie, R.F.D. #2, Winchester, O. 45697

Eugene Adams, P.O. Box #26, Weisburg, Ind. 47044

Arvil Kitts, 83A Maple Dr., Newton Falls, O. 44444

Matthew Forrest, 248 Fairgreen, Youngstown, O. 44504

Richard McDaniel, 5028 Kingsley Dr., Cincinnati, O. 45200

James Hopkins, 9301 Cornell, Taylor, Mich. 48180

George Landsaw, 6988 Bridges Lane, Cinn., O. 45230

Jack Jones, Jr., P.O. Box #191, Lake Milton, O. 44429

Charles Haggard, 1899 Reading Rd., Cinn., O. 45200

Clifford Rogers, 607 E. Main West Union, O. 45693

Arthur Drockelman, R.F.D. #1, Sunman, Ind. 47041

Luther Day, 408 E. Main St., Mt. Orab, O. 45154

J. D. Thompson, P.O. Box #68A, Lavalette, W.Va. 25535

Herbert Heflin, 2241 Hannaford Ave., Norwood, O. 45212

Farris Marcum, 2355 Norwood Ave., Cincinnati, O. 45200

Clyde Atkins, 651 Notre Dame, Austintown, O. 44515

Eugene Albans, Box #202, So. Columbus St., Somerset, O. 43783

Burtice Hines, 14963 Akron-Youngstown Rd., Diamond, O. 44412

Stanley Carpenter, 203 Christopher, Aberdeen, O. 45101

Carlos Fugett, R.F.D. #2, Hallock-Young Rd., Warren, O. 44400

Billy Edmiston, 4009 Carter Ave., Cinn., O. 45212

William McMath, 42 W. Church St., Newton Falls, O. 44444

Lindsay Worley, 3312 Red Fox Run Dr., Warren, O. 44400

Ress Beatty, 656 Western Ave., Covington, Ky. 41000

INTERROGATORY NO. 2

With respect to the "ex-Norwood drivers" set forth in paragraph 1 above, state:

(a) the names of those employees whose employment with the company was terminated during the years 1965, 1966 and 1967;

ANSWER: 2.(a) Twenty-five men terminated or quit.

Harold Wesley
Samuel Reed
Frank Battreall
Clyde Durham
John Hughes
Robert Hall
George Ottley
Austee Tucker
William Scott
William Whitten
Francis Ball
Ralph McDaniel
James Hopkins
Charles Haggard
Clifford Rogers
Luther Day
J.D. Thompson
Farris Marcum
Eugene Albans
Burtice Hines
Stanley Carpenter
Carlos Fugett
Billy Edmiston
Lindsay Worley
Ress Beatty

EXHIBIT 5

[418] National Master Automobile Transporters Agreement Covering Truckaway, Driveaway and Local Agreements for the Period of June 1, 1967 to June 1, 1970

[419] ARTICLE 32.

Discharge or Suspension

The Employer shall not discharge or suspend any employees without just cause, but in respect to discharge or suspension shall give at least one (1) warning notice of the complaint against such employee to the employee, in writing, and a copy of same to the Union affected, except that no warning notice need be given to an employee before he is discharged, if the cause of such discharge is dishonesty or drunkenness or recklessness resulting in serious accident while on duty, or the carrying of unauthorized passengers. The warning notice as herein provided shall not remain in effect for a period longer than outlined in the "Uniform Rules and Regulations." Discharge must be by proper written notice to the employee and the Union affected. The Local Union may request a hearing as to an employee's discharge, suspension or any disciplinary action. Should such hearing prove that an injustice has been done an employee, he shall be reinstated. The National Automobile Transporters Joint Arbitration Committee, Central, Eastern, or Western Conference Automobile Transporters Joint Arbitration Committee and/or the Joint State or City Automobile Transporter Grievance Committee shall have the authority to order full, partial or no compensation for time lost. Appeal from discharge, suspension or warning notice must be taken within ten (10) days by written notice, and a decision reached within thirty (30) days from the date of discharge, suspension or warning notice. If the employee involved is not within the home terminal area when the action of discharge, suspension or warning notice is taken, the ten (10) day period will start from the date of his return to the home terminal. If no decision has been rendered on the appeal within thirty (30) days, the case shall then be taken up as provided for in ARTICLE 7 of the National Master Automobile Transporters Agreement. "Uniform Rules and Regulations" with respect to disciplinary action covering the Conference as approved by the Joint Conference Committee shall prevail in the application and interpretation of this Article regardless of any provisions of this Agreement to the contrary.

EXHIBIT 6

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 432 For Room

No. 9 (Date) 5/23/67

From Adams Fairy Dairy

THANK YOU

J. D. Robinson
CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 432 For Room

No. 7 (Date) 5/23/67

From A.J. Cartwright

THANK YOU

J. D. Robinson
CLERK

A.J. Cartwright

REGISTRATION CARD

NAME Lawrence E. Patrick Jr.

STREET

CITY Lucasville STATE Ohio

REPRESENTING Thomson Motors

Car License State

Make of Car No. in Party 2

NOTICE TO GUESTS:—This property is privately owned and management reserves right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind.

Date 5/23/67 Rate Total 10 00

Tax (if any) 40

Form No. 11 — Butler Enterprises, Inc., Winston-Salem, N. C. Amount Paid 10 40

ROOM 9

NAME

DAYS OCCUPIED — S M T W T F S — TOTAL RATE

BEST COPY AVAILABLE

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 932 For Room

No. 10 (Date) 5/10/67

From Edwards

THANK YOU

J. D Rubin
CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 832 For Room

No. 9 (Date) 5/10/67

From Carlos Jewett

THANK YOU

J. D Rubin
CLERK

REGISTRATION CARD

NAME Carlos Jewett

STREET Peoria

CITY Londonderry STATE Ohio

REPRESENTING Purchase Mfg. Supply

Car License _____ State _____

Make of Car _____ No. In Party _____

NOTICE TO GUESTS:—This property is privately owned and management reserves right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind.

Date 5/10/67 Rate _____ Total 12 00

Tax (if any) 48

Form No. 11 — Butler Enterprises, Inc., Winston-Salem, N. C. Amount Paid 12 48

ROOM 9 NAME

DAYS OCCUPIED

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 832 For Room

No. 1 (Date) 5/15/67

From Eugene Gilbert

THANK YOU

J. D Rubin
CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 832 For Room

No. 6 (Date) 5/15/67

From B Hines

THANK YOU

J. D Rubin
CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 832 For Room

No. 7 (Date) 5/15/67

From D. O Crawford

THANK YOU

J. D Rubin
CLERK

REGISTRATION CARD

NAME Eugene Gilbert

STREET 4th Cleveland Ave.

CITY Newton Falls STATE Ohio

REPRESENTING Purchase Mfg. Supply

Car License _____ State _____

Make of Car _____ No. In Party 3

NOTICE TO GUESTS:—This property is privately owned and management reserves right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind.

Date 5/15/67 Rate _____ Total 15 60

Tax (if any) _____

Form No. 11 — Butler Enterprises, Inc., Winston-Salem, N. C. Amount Paid 15 60

ROOM 1 NAME

DAYS OCCUPIED

Towne Mancr Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 832 For Room

No. 12 (Date) 5/24/67

From B. Hines

THANK YOU

J. D. Rogers
CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 832 For Room

No. 9 (Date) 5/24/67

From Eugene Albert

THANK YOU

J. D. Rogers
CLERK

REGISTRATION CARD

NAME Eugene Albert & B Hines

STREET Pinebrook Lives

CITY Newton Falls STATE Ohio

REPRESENTING Quaker State Wire Freight

Car License _____ State _____

Make of Car _____ No. in Party 2

NOTICE TO GUESTS:—This property is privately owned and management reserves right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind.

Date 5/24/67 Rate _____ Total 12 00

Tax (if any) 48

Form No. 11 — Butler Enterprises, Inc., Winston-Salem, N. C. Amount Paid 1248

ROOM 9 NAME

DAYS OCCUPIED

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 932 For Room

No. 6 (Date) 5/22/67

From E. Allen

THANK YOU

J. D. Rogers
CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 832 For Room

No. 5 (Date) 5/22/67

From Burt Hines

THANK YOU

J. D. Rogers
CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 832 For Room

No. 7 (Date) 5/22/67

From C. Rogers

THANK YOU

J. D. Rogers
CLERK

E. Allen & C. Rogers

REGISTRATION CARD

NAME Burt Hines

STREET _____

CITY Fordstown STATE Ohio

REPRESENTING Quaker State Wire Freight

Car License _____ State _____

Make of Car _____ No. in Party 3

NOTICE TO GUESTS:—This property is privately owned and management reserves right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind.

Date 5/22/67 Rate _____ Total 15 00

Tax (if any) 00

Form No. 11 — Butler Enterprises, Inc., Winston-Salem, N. C. Amount Paid 15 00

ROOM 5 NAME

DAYS OCCUPIED

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 8.32 For Room

No. 6 (Date) 5/23/67

From ALPHE PATCH

THANK YOU

J. D. Rykert
CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 8.32 For Room

No. 10 (Date) 5/23/67

From GRAYDON H. CROFT

THANK YOU

J. D. Rykert
CLERK

REGISTRATION CARD Alphe Patch

NAME GRAYDON H. CROFT

STREET

CITY LORDSTOWN STATE OHIO

REPRESENTING ANCHOR MOTOR FREIGHT

Car License State

Make of Car No. in Party 2

NOTICE TO GUESTS:—This property is privately owned and management reserves right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind.

Date 5/23/67 Rate Total 16 00

Tax (if any) 40

Form No. 11 — Butler Enterprises, Inc., Winston-Salem, N. C. Amount Paid 16 40

ROOM 10 NAME

DAYS OCCUPIED

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 7.26 For Room

No. 10 (Date) 4/14/67

From Vincent Ferrara

THANK YOU

J. D. Rykert
CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 7.26 For Room

No. 3 (Date) 4/14/67

From B. HINES

THANK YOU

J. D. Rykert
CLERK

REGISTRATION CARD

NAME Vincent Ferrara

STREET

CITY Fostoria STATE Ohio

REPRESENTING Anchor Motor Freight

Car License State

Make of Car No. in Party 2

NOTICE TO GUESTS:—This property is privately owned and management reserves right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind.

Date 4/14/67 Rate Total 16 00

Tax (if any) 40

Form No. 11 — Butler Enterprises, Inc., Winston-Salem, N. C. Amount Paid 16 40

ROOM 10 NAME

DAYS OCCUPIED

EXHIBIT 7

ANCHOR MOTOR FREIGHT, INC.
P.O. BOX 68
WARREN, OHIO 44482

5/31/67

To whom it may concern.

I Anthony Pagano have signed receipts for the men at Anchor Motor Freight who have stayed at the Town Manor Motel and on pages attached to this letter is three pages which consist of all moneys recived by Anchor drivers during the months of April and May and I am willing to have this notorized to assure all concerned that this is accurate. I manage the motel in my brother-in-laws absence and it is with his permission that this list has been compiled.

Anthony Pagano

Subscribed and sworn to before me this 31st day of May 1967

Rose Argulski
ROSE ARGULSKI
NOTARY PUBLIC, State of N. Y., Genesee Co. No. 2,
Commission Expires March 30, 19[illegible]

PAGE 1

PHONE 343-3360

TOWNE MANOR MOTEL & APTS.
471 W. MAIN STREET BATAVIA, NEW YORK

NOBLE WE PARTCH
LARDSTOWN OHIO
4/7/67 $7.28

BURTICI HINES
LORDSTOWN OHIO
4/11/67 7.28

EUGENE ALBAN
NEWTON FALLS OHIO
4/11/67 7.28

EUGENE ALBAN
NEWTON FALLS OHIO
4/14/67 7.28

VINCINT MARIANO
4/14/67 $10.40 NO-IN PARTY 2

Anthony Pagano
Andrew Statnik
5/31/67 Rose Argulski

ROSE ARGULSKI
NOTARY PUBLIC, State of N.Y., Genesee Co. No. 2,
Commission Expires March 30, 19[illegible]

CHESTER HOMMELL
4/14/67 728

VINCINT MARIANO
4/12/67 NO-IN
832 PARTY 2

BURTiso HINES
4/20/67 8.32

HINES - ALBAN
4/25/67 #10.40 NO-IN
PARTY 2

EUGENE ALBAN
4/28/67 728

PAGE 2

PHONE 543-3360

TOWNE MANOR MOTEL & APTS.
471 W. MAIN STREET BATAVIA, NEW YORK

BURT HINES
LORDSTOWN OHIO
5/17/67 #8.32

NOBHE W. PARTCH
LORDSTOWN OHIO
5/17/67 832

FRANK BALL
BX 69
WARREN OHIO
5/16/67 #832

CARLOS JUGETT
YORDST OHIO
5/15/67 - #832

Anthony Pagano
Andrew Shubrick
5/31/67

ROSE ANGULSKI
NOTARY PUBLIC, State of N.Y., Genesee Co. No. 8
Commission Expires March 30, 19[illegible]

BEST COPY AVAILABLE

CARLAS FOGELF J. WORLEY
LORDSTOWN OHIO
5/10/67 . 12.48 No. IN PARTY

EUGENE ALBAN
NEWTON FALLS OHIO
5/15/67 15.60 No IN PARTY 3

CHAS THOMPSON
WARREN OHIO
5/10/67 $8.32

JAMES E HUGGINS
LARDSTOWN OHIO
5/5/67 #7.28

BURT HINES ART CARTWRIGHT
LORDSTOWN OHIO
5/5/67 #1248. No. IN PARTY 2

PHONE 343-3360 PAGE 3

TOWNE MANOR MOTEL & APTS.
471 W. MAIN STREET BATAVIA, NEW YORK

WM McMATH
LORDSTOWN - OHIO
ANCHOR MOTOR FREIGHT
5/26/67 - $8.32

RED HINES
5/26/67 832

EUGENE ALBAN - B HINES
Cleveland Ave
NEWTON FALLS OHIO
ANCHOR MOTOR FREIGHT
5/24/67 #1248

CARLOS FOGELT
LORDSTOWN OHIO
8/24/67 $832

5/31/67
Anthony Pagano Anne Angelski
Andrew Klubnik

KUSE ARCULSKI
NOTARY PUBLIC, State of N.Y., Comm. expires March 30, 19

NOISHE PARTCH
GRAYDOW H CROFR
LORRSTOWN OHIO
5/23/67 10 40

ART CARTORIGHT
JAMES FITZ PATRICK
LARCLSTOWN OHIO
ANCHOR MOTOR
9/1040

WM MC MOTH
LAIDSTOWN OHIO
#8.32

C. ALBAW & C. ROGERS
BURT HINES
LARDSTOWN OHIO
5/22/67 - #16 60

No IN-PARTY
5

EXHIBIT 8

ANCHOR MOTOR FREIGHT, INC.
P.O. BOX 69
WARREN, OHIO 44482

May 31-1967

To Whom it May Concern:

I Joseph D Rispoli verify that the information Notarized has been ~~with~~ to My knowledge Compiled by Anthony Pagano and myself is correct.

Joseph D. Rispoli

Eugene Alton 5/31/67 # 8 32
Carlos Wright 5/31/67 # 8 32
Wm. Mc Moth 5/31/67 # 8 32

Statement:

On the evening of 5/15/67. D. Crawford, B. Hines and E. Albans paid $ 5.20 each for lodging.
Furthermore E. Albans was the only one who registered. D. Crawford, B. Hines and E. Albans were given a receipt each in the amount of $ 8.32.

Joseph D. Repicci.
State of New York. 6/3/67 6 o- P.M
County of Genesee.
City of Batavia
Sworn to before me this 3rd day of June 1967.
Fred A Quen.
Notary Public
2Cy 3/31/68

State of New York

County of Genesee

Joseph D. Repicci, being duly sworn, deposes, and says that he is the owner of Town Manor Motel and Apartments in Batavia, New York. That he has been the owner of this motel since 1961.

Mr. Repicci further says that in his position as owner and clerk he has been in charge of assigning rooms and collecting room rentals from drivers of Anchor Motor Freight, Lordstown, Ohio Division.

Mr. Repicci further says that on many occasions Anchor Motor Freight Drivers have been assigned two to a room, with just one driver registering.

Mr. Repicci further says that on many occasions he has received payment from one person and given two separate inflated receipts as they requested.

Mr. Repicci states that this was done to prevent the drivers from going to other motels.

State of New York

Joseph D Repicci
Joseph D. Repicci, Owner

Subscribed and Sworn to before me this 5th day of June 1967

Rose Argulski

ROSE ARGULSKI

EXHIBIT 9

Minutes of Meeting

[437]

NATIONAL AUTOMOBILE TRANSPORTERS LABOR DIVISION
SUITE 1700—ONE WOODWARD AVENUE
DETROIT, MICHIGAN 48226
Area Code 313 962-8920
Divisions:
Automobile Transporters Eastern Conference
Automobile Transporters Central Conference
Automobile Transporters Western Conference

MINUTES OF MEETING OF THE
CENTRAL CONFERENCE
AUTOMOBILE TRANSPORTERS JOINT ARBITRATION COMMITTEE
HELD WEDNESDAY AND THURSDAY, JULY 26 AND 27, 1967
AT THE PICK-FORT SHELBY HOTEL
LAFAYETTE BLVD. AT FIRST STREET, DETROIT, MICHIGAN

NOTE: The principals on the Committee who were involved in a particular case were excused from the meeting room during the period in which their case was being decided.

DOCKET NO.

* * * * *

[438]

41. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. DISCHARGE—Request of Driver Eugene Alban for reinstatement with full seniority and pay for all time lost.

AND

42. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. DISCHARGE—Request of Driver Arthur Cartwright for reinstatement with full seniority and pay for all time lost.

AND

43. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. DISCHARGE—Request of Driver Dwain O. Crawford for reinstatement with full seniority and pay for all time lost.

AND

44. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. DISCHARGE—Request of Driver Graydon H. Croft, Jr. for reinstatement with full seniority and pay for all time lost.

AND

45. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. DISCHARGE—Request of Driver James Fitzpatrick for reinstatement with full seniority and pay for all time lost.

AND

46. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. DISCHARGE—Request of Driver Carlow T. Fugett for reinstatement with full seniority and pay for all time lost.

AND

47. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. DISCHARGE—Request of Driver Burtice A. Hines for reinstatement with full reinstatement with full seniority and pay for all time lost.

AND

48. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. DISCHARGE—Request of Driver Vincent Mariano for reinstatement with full seniority and pay for all time lost.

AND

49. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. DISCHARGE—Request of Driver Noble W. Partch for reinstatement with full seniority and pay for all time lost.

AND

50. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. DISCHARGE—Request of Driver Clifford Rogers for reinstatement with full seniority and pay for all time lost.

AND

51. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. DISCHARGE—Request of Driver Lindsay Worley for reinstatement with full seniority and pay for all time lost.

[439]

THE COMPANY AND THE LOCAL UNION AGREED THAT CASES 41 THROUGH 51 COULD BE HEARD ON JOINT RECORD; HOWEVER, EACH OF THE GRIEVANTS WAS ALLOWED TO PRESENT ANY SPECIFIC FACTS PERTAINING TO HIS OWN CASE. AT THE CONCLUSION OF THE HEARING, THE FOLLOWING DECISION WAS RENDERED:

DECISION: The Committee held, by majority vote, as follows:

Based on the facts, evidence and statements presented with respect to these 11 cases, the discharges of Drivers Eugene Alban, Arthur Cartwright, Dwain O. Crawford, Graydon H. Croft, Jr., James FitzPatrick, Carlos T. Fugett*, Butrice A. Hines, Vincent Mariano, Noble W. Partch, Clifford Rogers and Lindsay Worley are upheld.

*Corrected spelling

52. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Back pay claim of Driver Eugene Alban in amount to be determined due to alleged violation occurring on or about 5/16/67.

SETTLED AND WITHDRAWN WITH THE UNDERSTANDING THAT THE COMPANY WILL PAY THE 4-CAR RATE SINCE THE TRAILER WAS FILLED TO CAPACITY.

53. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Back pay claim of Driver Eugene Alban in amount to be determined due to alleged violation of seniority on or about 4/10/67.

DECISION: By majority vote, the Committee denied this claim based on the facts presented; however, the Company and the Union shall get together and clarify their dispatch rules immediately.

54. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Back pay claim of Yardmen Joseph Berkos and Michael Italiano for time lost due to alleged violation of the contract on or about 5/4/67.

WITHDRAWN.

55. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Back pay claim of Driver Chas. L. Campbell in amount to be determined due to alleged violation of dispatch procedure occurring on or about 6/6/67.

DECISION: By majority vote, the Committee denied the back pay claim of Driver Chas. L. Campbell because the Company was not in violation of its dispatch procedure.

56. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Back pay claim of Driver Chas. L. Campbell in the amount of difference in pay between load to Willoughby, Ohio and Rochester, N.Y. due to alleged violation of dispatch procedure on or about 6/1/67.

SETTLED AND WITHDRAWN WITH THE UNDERSTANDING THAT THE COMPANY WILL PAY THE DRIVER AN ADDITIONAL $22.31.

57. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Back pay claim of Driver Robert Chitwood in the amount of Chattanooga, Tenn. trip due to alleged violation occurring on or about 4/10/67.

[440]

DECISION: By majority vote, the Committee denied this claim based on the facts presented; however, the Company and the Union shall get together and clarify their dispatch rules immediately.

58. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Back pay claim of Driver Arthur E. Drochelman in amount to be determined due to alleged violation of seniority on or about 4/10/67.

DECISION: By majority vote, the Committee denied this claim based on the facts presented; however, the Company and the Union shall get together and clarify their dispatch rules immediately.

59. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Back pay claim of Driver Matthew Forrest in amount to be determined due to alleged violation of seniority on or about 4/10/67

DECISION: By majority vote, the Committee denied this claim based on the facts presented; however, the Company and the Union shall get together and clarify their dispatch rules immediately.

60. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Back pay claim of Yard Man Robert J. Gallagher in amount of 3 days' pay due to alleged violation of seniority on or about 7/8/67.

DECISION: By unanimous vote, the Committee held that the Company shall not work any employee a split shift. With respect to this particular case, the Company shall pay Yard Man Robert J. Gallagher six hours at time and one-half because they worked him two split shifts.

61. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Request of Driver Charles V. Thompson for cancellation of warning notice and pay for 4 days' disciplinary time off due to alleged violation occurring on or about 4/23/67.

AND

62. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Back pay claim of Driver Charles V. Thompson in the amount of $43 per day for time lost due to alleged violation on or about 5/8/67.

THE ABOVE TWO CASES 61 AND 62 WERE HEARD ON JOINT RECORD AND THE FOLLOWING DECISION RENDERED:

DECISION: By unanimous vote, the Committee held that these two cases were improperly on the Docket.

63. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. VOLUNTARY QUIT—Request of Driver Joseph N. Vance for reinstatement with full seniority and pay for all time lost.

DECISION: By majority vote, the Committee denied the request of Driver Joseph N. Vance for reinstatement based on the facts and evidence presented.

64. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Complaint of Wm. H. Vitatoe concerning failure of Company to furnish transportation for release crew.

WITHDRAWN.

[441]

65. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Back pay claim of Driver Lindsay Worley in amount to be determined due to alleged violation of seniority on or about 4/10/67.

DECISION: By majority vote, the Committee denied this claim based on the facts presented; however, the Company and the Union shall get together and clarify their dispatch rules immediately.

66. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Request of Driver Lindsay E. Worley for pay at time of reporting for dispatch on or about 5/8/67.

DECISION: By majority vote, the Committee denied the back pay claim of Driver Lindsay E. Wor-

ley. However the Company should stagger the starting time so that the men will not be kept waiting at the window for assignment of their loads.

67. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Back pay claim of Driver Lindsay E. Worley in amount to be determined due to alleged violation of Sec. 2, Par. D and Sec. 4, Par. A of Local Rider, arising on or about 6/6/67.

DECISION: By unanimous vote, the Committee held that, if a rush load arises while a dispatch is open, it may be added to the list of available loads immediately. Therefore the back pay claim of Driver Lindsay E. Worley is denied.

68. *Local Union No. 377 (Youngstown) vs. Anchor Motor Freight, Inc.*

Re. Request of Committeeman Lindsay Worley for clarification of how many miles constitute a sleeptrip.

DECISION: By unanimous vote, the Committee held that this case is improperly before this Committee.

* * * * *

EXHIBIT 10

[443]

Statement of Joseph Repicchi As Related to Lauren Rachlin, Esq. at the Towne Manor Motel Office at Approximately 10:45 P.M. on the 19th of October, 1967.

Questions by Mr. Rachlin:

Q. My name is Lauren D. Rachlin, I am an attorney representing eleven drivers of the Anchor Motor Freight Company. They are involved in a grievance proceeding arising out of their discharge by the Anchor Motor Freight Company. This is Mrs. Louise Steinhoff who is a Court Reporter and a Notary Public in the State of New York. I would like to ask you some question concerning the facts that allegedly led up to the discharge of my client. I would also like to have your statement sworn if you are willing to do so. A. Yes, I am.

Mr. Repicchi was duly sworn by Louise M. Steinhoff, Notary Public, County of Erie, State of New York.

By Mr. Rachlin:

Q. Mr. Repicchi, are you the owner and manager of the Towne Manor Motel and Apartments on Route 5 at 471 West Main Street, Batavia, New York? A. Yes, I am.

Q. And are you personally acquainted with the following **[444]** men: Vincent Mariano, Butrice Hines, Arthur Cartwright, James Fitzpatrick, Lindsay Worley, Carlos Fugett, Craydon H. Croft, Nobel Partch, Eugene Alban Dwain Crawford and Clifford E. Rogers? A. No.

Q. You don't know them personally? A. No.

Q. You don't have any individual recollection of any of these men, do you sir? A. Well, I may have seen them around. I see a million of these men around but I don't know them and I wouldn't if I saw them again.

Q. Do you know any of these men by their name? A. No, I don't.

Q. Do you have many truck drivers coming in? A. Oh, yes.

Q. Approximately how many? A. Between 60 and 90 a month, there's at least a couple every day.

Q. Do you work at the motel yourself, sir? A. Do I work here? Yes.

Q. Do you spend time here at the motel on a regular shift? A. I spend five nights a week here from 8:00 P.M. to 12:00 **[445]** midnight.

Q. That is Monday through Friday? A. Yes.

Q. Is that the only time you are here on those days? A. Yes.

Q. Other than that is there a clerk on duty? A. Yes.

Q. Would you describe your registration procedure for me? A. Well, when one enters and signs for a room, first they ask the price and we tell them and they sign.

Q. What is signed? A. They sign a registration.

Q. Is it a book? A. No, this is it, it's a card.

Q. It is a card with a receipt attached? A. That's right.

Q. Do they pay the money at that time? A. Yes.

Q. Then what happens? A. They pay us the money and we give them the receipt and the key.

Q. On occasions are there more than one person registered for a room? **[446]** A. Sometimes but not too often.

Q. When you have two men such as truck drivers registering for a room will they each sign a card for the room? A. No. If it is one company the one will sign his name and the other fellow will sign the same card.

Q. How many receipts do they get? A. We give two separate receipts but sometimes only one if that's what they ask for.

Q. Does it occasionally happen that one truck driver will register for a room but more than one driver will use the room and more than one driver will pay for the room and be given separate receipts? A. Yes, it has happened.

Q. It is not unusual in your practice, is it? A. No.

Q. Has it ever happened that a truck driver will register for a room and another truck driver come in later and use the room and pay for it without signing the card? A. Yes, it has happened where one driver will come in and another one will share the room and pay for it but will not sign the card if they are with the same company.

Q. If they are with the same group? A. Yes, yes.

[447] Q. That would not be unusual either? A. No.

Q. Has it ever happened that a truck driver will call ahead and ask you to hold a room for him? A. Yes.

Q. What is your procedure in that case? A. I would tell him on the phone when he calls, I will have room number so and so, whichever it is with the key in the door for him and that he will have his receipt on the desk in the room and he can leave the money on the desk. That is exactly what I have done. There is no one here after midnight on duty.

Q. You would make out the receipt for whatever the regular rate is for the room? A. That's right .

Q. In the morning would you pick up the money? A. No, the clerk would pick it up.

Q. You would have no way of knowing how much money is actually left then? A. No.

Q. For persons registering between the hours of 8:00 P.M. and 12:00 Midnight and paying the money at that time, you would be the one to give them the receipt at that time, right? **[448]** A. Yes.

Q. And for persons registering at any other time your clerk would make the receipt out, is that right? A. Yes.

Q. Was it the practice of the clerk to sign your name or his name? A. Sometime he signed my name and sometime he signed his name. I never took particular notice of what he did.

Q. Did there come a time when some representative of Anchor Motor Freight Company came to your motel, sometime in early June of this year and asked you about receipts that had been given to certain drivers? A. Yes.

Q. Would you tell me what was said? A. When this fellow came in I wasn't here. I do carpenter work and the clerk was here. He talked to my clerk.

Q. And did the clerk then call you over? A. Yes.

Q. You don't know what was said to your clerk? A. No.

Q. When you got here what did the man say to you? A. He said that they were having trouble with the men and that they were investigating the receipts. That the **[449]** stubs, the receipts were higher than what they were paying us. On some occasions when we rent out a room, if we run out of single rooms we give them a larger room, we still give them the room for the same amount as the single room but I give them a receipt for the amount of the single room. If the guys are good enough to bunk in together I still give them the receipt for the single room.

Q. Can you give me a concrete example of this? A. If a man wants a single room it is $7.00 per room. When I run out of single rooms I put two fellows in a large room with two large beds and charge them $7.00 each, I give them the receipt for $7.00 and then I would refund them a $1.00 because they were good enough to bunk together.

Q. Did you do that every time, in every case with truck drivers? A. No.

Q. Was your clerk aware that you had done this on some occasions? A. Yes.

Q. Now, sir, you gave a certain statement to Anchor Motor Freight Company and I am now referring to the statement: **[450]** "On the evening of 4-14-67 V. Mariano and B. Hines paid $5.20 each for lodging. Furthermore V. Mariano was the only one who registered. V. Mariano and B. Hines were given a receipt each in the amount of $7.28." This statement is signed by Joseph D. Repicchi and dated June 3rd, 1967. Do you have any personal knowledge whatever of that event? A. No. They had shown me something—

Q. The only way you would have had that knowledge would be from your registration records, is that right? A. That's right.

Q. In that statement where you say that V. Mariano and B. Hines paid $5.20 each for the lodging, is that based on a personal recollection of the event or was that based upon what was written on the registration card? A. It was on the registration card. I don't recall seeing these fellows at the time.

Q. If these fellows registered at some time other than the hours between 8:00 P.M. and 12:00 Midnight you would not have prepared that registration card would you, sir? A. No, I wouldn't.

Q. Who normally makes the notation on the card as to the amount paid for the room? **[451]** A. The clerk.

Q. Does the person registering ever see the amount written down on the card? A. He might and he might not.

Q. Is it possible then sir, that V. Mariano and B. Hines in fact paid $7.28 on April 14th, 1967 and the clerk made an entry of $5.20 as having been paid by them and the clerk having retained the difference? A. It could be possible.

Q. And the clerk knowing that you did not object to that policy would be perfectly safe wouldn't he? A. That's right.

Q. And there would be no way you would know that? A. No.

Q. And you wouldn't raise any question about that, and the men may well have paid $7.28? A. That's right.

Q. So then your statement to the effect that V. Mariano and B. Hines paid $5.20 each for the lodging should be corrected to read: "according to a registration card which may not have been completed in the presence of V. Mariano and B. Hines," is that not correct sir? [452] A. Yes.

Q. In that same statement you mentioned that V. Mariano was the only one who registered for the room? A. Yes.

Q. That would not be an unusual practice would it? A. No.

Q. If the other man was going to try to cheat you, he would not have paid anything would he? A. That's right.

Q. Would there be any way of knowing if he didn't pay or didn't register for the room? A. No, I wouldn't know. I wouldn't have any way of knowing it.

Q. Now, Mr. Repicci, Arthur Cartwright and James Fitzpatrick allegedly each submitted to the Company motel receipts from your motel in the amount of $8.32 for rooming on May 23rd, 1967, but the total expense for that occupancy was allegedly $10.40. Do you have any specific recollection of that event? A. No, I don't.

Q. And unless they registered on that date between the hours of 8:00 P.M. and 12:00 Midnight the receipt that was made out would have been made out by the clerk, right? [453] A. That's right.

Q. And again you would have no personal knowledge of the actual price paid by the men? A. No.

Q. You can only state what is shown on the receipt? A. That is exactly right.

Q. Again could it have been possible that the clerk could have written down an amount other than the amount that was actually paid by the men? A. It could be done that way, yes.

Q. And you would have no knowledge of it? A. None whatever.

Q. And you would have no knowledge of the actual amount of money paid by these men? A. None at all.

Q. Are you always on duty between the hours of 8:00 P.M. and 12:00 Midnight five days a week? A. Not always. I sometimes don't get here but usually I am here.

Q. Then it is even possible sir on some occasions that a clerk might have been on duty between the hours of 8:00 P.M. and Midnight? A. Yes, there have been occasions.

[454] Q. Between Monday and Friday? A. Yes, there have been occasions.

Q. Now, sir, Lindsay Worley and Carlos Fugett allegedly each submitted a motel receipt in the amount of $8.32 for lodging incurred at your motel on May 10, 1967, and the total expense for that occupancy allegedly was $12.48. Do you have any specific recollection of that event? A. No, I don't.

Q. Unless these two men in fact registered during the hours of 8:00 P.M. and 12:00 Midnight the receipts upon which you base your knowledge would have been issued by the clerk? A. Yes, sir.

Q. And you would have no personal knowledge of the amount actually paid by these men? A. No.

Q. So if you said each driver paid $6.24 you are only stating what the receipts indicate, is that right? A. That is exactly it.

Q. And would it be possible that the clerk could have written down an amount other than that which was actually paid by the men? **[455]** A. That is possible.

Q. You have no knowledge of the amount paid by these two men? A. None.

Q. Now sir, Craydon H. Croft and Nobel Partch, allegedly submitted to the Anchor Motor Freight Company receipts from your motel each in the amount of $8.32 for lodging on May 23rd, 1967 and the total expenditure for that lodging was allegedly $10.40 which would indicate each man paid $5.20. Do you have any specific recollection of that event? A. No, I don't.

Q. And unless they registered between the hours of 8:00 P.M. and 12:00 Midnight the receipt would have been made out by the clerk, is that right? A. That's right.

Q. And in fact it is possible that a receipt was made out by the clerk if they registered between those hours and you were not here? A. That is correct.

Q. You have no personal knowledge of the amount paid by these two men? A. I really don't know.

[456] Q. If you stated each driver paid $5.20 you are only stating what was stated on the receipt? A. That is correct.

Q. Would it be possible that the clerk could have written down an amount other than the amount that was paid by the men? A. It could be possible.

Q. You would have no knowledge of the amount actually paid by these men? A. No, sir. No knowledge at all.

Q. Again sir, Butrice Hines, Dwain Crawford and Eugene Alban allegedly each submitted to the Anchor Motor Freight Company receipts in the amount of $8.32 for lodging at your motel on May 15th, 1967 and the total expense for the lodging was actually supposed to be $15.60. Now, sir, do you have any specific recollection as to that event? A. No, I don't.

Q. Unless this registration occurred between the hours of 8:00 P.M. and 12:00 Midnight the receipt would have been made out by the clerk? A. Yes.

Q. You have no personal knowledge of the amount paid by **[457]** these two men? A. No, sir.

Q. If you said in a statement that each driver paid $5.20 you were only stating what the receipt showed, is that right? A. That's right.

Q. Would it be possible that the clerk could have written down an amount other than the amount actually paid by the men? A. It is possible.

Q. And again you would have no personal knowledge of the amount actually paid by them on that occasion? A. No knowledge of that at all.

Q. No, Mr. Repicci, I believe Clifford E. Rogers and Butrice Hines each allegedly submitted a motel receipt in the amount of $8.32 for lodging incurred at your motel on May 24th, 1967 and the total expense for that lodging was actually $12.48. Do you have any specific recollection of that event? A. No, I don't.

Q. Unless these two men registered between the hours of 8:00 P.M. and 12:00 Midnight the receipts would have been made out by the clerk? **[458]** A. That's right.

Q. You have no knowledge of the amount paid by these men? A. No, I don't.

Q. If you stated each driver paid $6.24 you are only stating what the receipt itself shows? A. That is correct.

Q. Would it be possible the clerk wrote down an amount other than the amount paid by these men? A. It is possible.

Q. You would have no knowledge of the amount actually paid by these men? A. None.

Q. Although I have specified certain given instances you testified that you have no personal recollection of these instances, is that true? A. That's true.

Q. Am I correct in stating regardless of the specific dates I have given you, your answer to these questions would have been exactly the same? A. That is right.

Q. Mr. Repicci, are you able to check the signatures on the registration cards for each of the times I have just related to you? **[459]** A. I don't have the records. The Company came in and took them. They said they wanted to make photostatic copies of them and I have never gotten them back.

Q. How did you happen to give them the records? A. They said they wanted to make copies.

Q. Did they tell you what purpose they wanted them for? A. They said it would be a good idea if they had a charge account with the company and the men just signed and they would send the money at the end of the month, it sounded like a good idea to me.

Q. Have these registration cards ever been returned to you? A. No, they haven't been.

Q. Did you personally give them the cards? A. He came in and asked for them and he went through them and pulled them out. I know I had no business to let him take them.

Q. So, sir, if two drivers registered for a $12.48 room and I take it the 48 cents is the sales tax? A. Right.

Q. You would have no way of knowing whether each driver actually paid any other figure would you? A. No.

Q. You wouldn't know if he paid $6.00 or $8.00? **[460]** A. No, sir.

Q. You are actually relying on your clerk to put down the right amount? A. That's right.

Q. As you stated before it didn't matter to you if he gave a rebate to the driver or not? A. No.

Q. You don't know if any specific case exists where he gave a rebate to any specific driver or not? A. No.

Q. Don't you care? A. To tell the truth, I don't care.

Q. I am going to have your testimony transcribed and we would like to reach you tomorrow so you can read it over and if it is correct sign it, is that all right? A. That's all right.

Q. I would like to go over this once more, it is a fact that you might make out a receipt for a driver if he should check into your motel after you had gone off duty and you would leave a receipt for him in the full amount but you would have no way of knowing if the driver actually left that amount of money or any other amount inasmuch as you would not pick up the money, is that **[461]** right? A. That's right.

Q. It is also possible that a driver could have paid the full amount for which the receipt was given and the clerk made an entry on the register of a lesser amount retaining the difference for himself and not telling you, is that right? A. Yes.

Q. I would like to know where we could get in touch with you tomorrow? A. You can call my home and my wife will tell you where I can be reached. My number is 343-8806 that is my home. I will be at 127 Grand View Terrace building a house out there.

Mr. Rachlin: I want to thank you very much.

• • • • •

(Verification omitted in printing.)

EXHIBIT 11

Minutes of Meeting

[462]

NATIONAL AUTOMOBILE TRANSPORTERS LABOR DIVISION
SUITE 1700—ONE WOODWARD AVENUE
DETROIT, MICHIGAN 48226
Area Code 313 962-8920

Divisions:

Automobile Transporters Eastern Conference

Automobile Transporters Central Conference

Automobile Transporters Western Conference

MINUTES OF MEETING OF THE
CENTRAL CONFERENCE
AUTOMOBILE TRANSPORTERS JOINT ARBITRATION COMMITTEE
HELD THURSDAY AND FRIDAY, OCTOBER 26 AND 27, 1967— AT THE PICK-FORT SHELBY HOTEL, LAFAYETTE BLVD. AT FIRST STREET, DETROIT, MICHIGAN

NOTE: The principals on the Committee who were involved in a particular case were excused from the meeting room during the period in which their case was being decided.

DOCKET NO.

* * * * *

[463]

72. LOCAL UNION NO. 377 (YOUNGSTOWN) VS. ANCHOR MOTOR FREIGHT, INC.

Re. Request of Drivers Eugene Alban, Arthur Cartwright, Dwain O. Crawford, Graydon H. Croft, Jr., James Fitzpatrick, Carlos T. Fugett, Burtice A. Hines, Vincent Mariano, Noble W. Partch, Clifford Rogers and Lindsay Worley for rehearing of cases 41 thru 51 heard July, 1967, entitled "DISCHARGE—Request of Eugene Alban for reinstatement with full seniority and pay for all time lost." on the basis of new evidence, "DISCHARGE—Request of Arthur Cartwright for reinstatement with full seniority and pay for all time lost." on the basis of new evidence, "DISCHARGE—Request of Dwain O. Crawford for reinstatement with full seniority and pay for all time lost." on the basis of new evidence, "DISCHARGE—Request of **[464]** Graydon H. Croft, Jr. for reinstatement with full seniority and pay for all time lost." on the basis of new evidence, "DISCHARGE—Request of James Fitzpatrick for reinstatement with full seniority and pay for all time lost." on the basis of new evidence, "DISCHARGE—Request of Carlos T. Fugett for reinstatement with full seniority and pay for all time lost." on the basis of new evidence, "DISCHARGE—Request of Burtice A. Hines for reinstatement with full seniority and pay for all time lost." on the basis of new evidence, "DISCHARGE—Request of Vincent Mariano for reinstatement with full seniority and pay for all time lost." on the basis of new evidence, "DISCHARGE—Request of Noble W. Partch for reinstatement with full seniority and pay for all time lost." on the basis of new evidence, "DISCHARGE—Request of Clifford Rogers for reinstatement with full seniority and pay for all time lost." on the basis of new evidence, "DISCHARGE—

Request of Lindsay Worley for reinstatement with full seniority and pay for all time lost." on the basis of new evidence.

DECISION: By unanimous vote, the Committee held that the requests for rehearing are denied because there was no new evidence presented which would justify a reopening of this case.

• • • • •

EXHIBIT 12

[465] Notice to Take Deposition (Instant Case)

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Ohio
Eastern Division

(Title omitted in printing)

Notice is hereby given to the defendants in this action that on Wednesday, August 11, 1971 and Thursday, August 12, 1971 plaintiffs will take the depositions of:

Local 377, Chauffeurs, Teamsters,
Warehousemen & Helpers
1223 West Federal Street
Youngstown, Ohio

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen & Helpers of
America
c/o William Presser, Vice President
2070 East 22nd Street
Cleveland, Ohio

Anchor Motor Freight, Inc.
21111 Chagrin Boulevard
Cleveland, Ohio

to be used as evidence on the trial of the above-entitled cause, at the office of Berkman, Gordon, Kancelbaum & Schwartz, 1320 The Superior Building, Cleveland, Ohio, between the hours of 10:00 A.M. and 5:00 P.M., of said days and that the taking of the same will be adjourned from day to day, between the same hours, until they are completed.

[466] Each of the above named deponents is requested to designate one or more persons to testify on its behalf with respect to the following matters upon which examination is requested:

1. The terms and conditions of employment of drivers in effect at the Norwood Terminal of Anchor Motor Freight at the time of its closing.

2. The closing of the Norwood Terminal and the transfer of drivers from Norwood to the Lordstown Terminal.

3. The terms, conditions and circumstances of negotiation, ratification and execution of all labor contracts and local riders governing the operation of Anchor Motor Freight's Lordstown Terminal from the date of its opening to the present.

4. The circumstances under which Teamster Local Union No. 964 acquired jurisdiction to represent employees at said Lordstown Terminal.

5. The circumstances under which such jurisdiction was transferred to Local Union No. 377.

6. All suspensions, discharges or disciplinary action of any kind levied by Anchor Motor Freight against any of the drivers who had transferred from Norwood to Lordstown.

7. All grievances and/or unfair labor practice charges filed since the opening of the Lordstown Terminal by any of the drivers who transferred from Norwood to Lordstown.

8. The persons and issues involved in the wildcat strike which occurred at the Lordstown Terminal in February, 1967, and the circumstances of its resolution.

9. Any and all gifts, loans or favors granted by Anchor Motor Freight or any of its officers or employees to **[467]** John J. Angelo or any other officers or employees of Teamster Local No. 377 or the International Brotherhood of Teamsters.

10. The circumstances surrounding Anchor Motor Freight's discharge of plaintiffs (and others for the same alleged cause).

11. The filing, processing and resolution of grievances filed by those discharged.

12. Plaintiffs' seniority and earnings at the time of their discharge.

13. The earnings from 1967 to date of those Lordstown drivers who have occupied the place on the seniority list that plaintiffs would have occupied had they not been discharged.

Each of the above named deponents is requested to bring with it to the deposition and to produce and permit plaintiffs to inspect and copy each of the following documents in its possession or to which it has access:

1. All collective bargaining agreements, labor contracts and local riders governing the operation of Anchor Motor Freight's Norwood Terminal at the time of its closing.

2. All collective bargaining agreements, labor contracts and local riders governing the operation of Anchor Motor Freight's Lordstown Terminal from the time of its opening to date.

3. Seniority list of drivers employed at the Norwood Terminal at the time of its closing.

4. Seniority lists of drivers employed at the Lordstown Terminal at the time of its opening, on June 1, 1967, and for each year thereafter to date.

5. Local by-laws of Teamster Union Local No. 964 applicable in 1966.

[468] 6. Local by-laws of Teamster Union Local No. 377 applicable in 1966 and 1967.

7. Copies of all grievances filed during the years 1966-1968 by drivers who had transferred from Norwood to Lordstown.

8. Copies of all documents pertaining to discharge, suspension or other disciplinary action taken against any driver who had transferred from Norwood to Lordstown.

9. All notes, memoranda or other records of any conferences, negotiations or discussions between any of plaintiffs and any officers or employees of Anchor Motor Freight regarding working conditions of drivers employed at the Lordstown Terminal.

10. All documents, memoranda, notes or other records pertaining to the wildcat strike at the Lordstown Terminal in February, 1967.

11. All documents, memoranda, notes or other records of complaints about working conditions at Lordstown made by drivers who had transferred from Norwood.

12. All employment records and personnel files of all drivers employed at Lordstown who had transferred from Norwood.

13. All documents, memoranda, notes and records pertaining to the discharge of plaintiffs (and others for the same alleged cause) including, but not limited to, discharge notices, documentary evidence of the alleged cause for discharge, contrary evidence submitted in behalf of plaintiffs, grievances filed by those discharged, and records, notes and memoranda of any local hearing, conferences or discussions regarding the validity of such charges.

[469] 14. All evidence, transcripts, records, memoranda and notes of arbitration hearings held in July and October of 1967 to determine the validity of plaintiffs' discharge.

15. Copies of all documents filed in National Labor Relations Board proceedings arising out of the discharge of plaintiffs.

16. Copies of all documents filed in Ohio Bureau of Unemployment Compensation proceedings arising out of the discharge of plaintiffs and others discharged for the same alleged cause.

/s/ Niki Z. Schwartz
Attorney for Plaintiffs
Berkman, Gordon, Kancelbaum & Schwartz
1320 The Superior Building
Cleveland, Ohio 44114
781-5245

(Certificate of service omitted in printing)

EXHIBIT 14

[478] Excerpts from Appendix I to Brief in Support of Motion for Summary Judgment of Defendant Anchor Motor Freight, Inc.

NATIONAL MASTER AUTOMOBILE TRANSPORTERS AGREEMENT COVERING TRUCKAWAY, DRIVEAWAY AND LOCAL AGREEMENTS

For the Period of

Central Conference Area March 1, 1964 to June 1, 1967

Western Conference Area July 1, 1964 to June 1, 1967

[510]

ARTICLE 7.

Grievance Machinery

Section 1. No Strike and/or Lockout

The Unions and the Employers agree that there shall be no strike, tie-up of equipment, slowdowns or walkouts on the part of the employees, nor shall the Employer use any method of lockout or legal proceeding without first using all possible means of a settlement, as provided for in this Agreement, of any controversy which might arise.

Section 2. Grievance Procedure

Disputes and grievances shall first be taken up by the employee involved, and if no settlement is reached, then taken up between the business agent of the Local Union involved and the Employer representative. Disputes and grievances shall be put in writing and presented to

the Company within one (1) week, whenever possible, after the grievance arises, but in no case later than thirty (30) days after the grievance arises. The Company must designate its representatives at each terminal who are authorized to settle grievances on the local level and must so notify the Local Unions within one (1) week of the consummation of this Agreement. After the dispute or grievance is reduced to writing, the said Company representative will make available for inspection by the business agents and/or Steward, time sheets and such other records as are pertinent to the handling of the specific dispute or grievance. This does not preclude nor prevent an oral attempt on the part of the business agent or Steward to settle such dispute or grievance before a request is made for such record. The dispute or grievance must be settled or deadlocked at the local level within five (5) days, excluding Saturday, Sunday and holidays, after the business agent has taken it up. After the five (5)-day period but not later than fifteen (15) days, either party has the right to file its grievance with the appropriate Local Committee or Joint Area Arbitration Committee referred to in Section 3 unless extension is mutually agreed to by Company and Local Union. The following procedure shall then apply:

Section 3. National Automobile Transporters Joint Arbitration Committee

(a) The Employers and the Unions from each of the two designated Conference areas shall together establish for the duration of this Agreement the National Automobile Transporters Joint Arbitration Committee. Any Panel of the National Joint Arbitration Committee hearing a case shall consist of an equal number of designated representatives of the Employers and the Unions who are parties to this Agreement.

Joint Area Arbitration Committees

(b) The Employers and the Unions, parties to this Agreement, shall together for the duration of this Agreement in the appropriate areas referred to in Article 1, Section 1, establish Automobile Transporters Joint Arbitration Committees to be designated as:

(1) Central Conference Automobile Transporters Joint Arbitration Committee; and

(2) Western Conference Automobile Transporters Joint Arbitration Committee.

[511] Any panel of a Joint Area Arbitration Committee hearing a case shall consist of an equal number of designated representatives of the Employers and the Unions who are parties to this Agreement from the appropriate area.

Joint State or City Automobile Transporters Grievance Committees

Central Conference Area

(c)

(1) The Employer and the Union in each city and/or area in the Central Conference where there are three or more Truckaway and/or Driveaway companies, shall together create a permanent Local Joint Committee, which shall consist of an equal number appointed by Employers and Union, but not less than three (3) from each group. Each member may appoint an alternate in his place.

Western Conference Area

(2) The Employers and Local Unions shall agree upon the number of and geographical location of Joint

State Automobile Transporters Grievance Committees to function hereunder.

(3) The Local Joint Committee shall at their first meeting formulate rules of procedure to govern the conduct of its proceedings. However, if the Committee fails to agree upon rules of procedure, the matter shall be referred to the appropriate Joint Area Arbitration Committee, which Committee shall formulate rules of procedure for the Local Committee. Each Local Joint Committee shall have jurisdiction over disputes and grievances involving said Local Union.

Section 4. Function of National Joint Committee

(a) It shall be the function of the National Automobile Transporters Joint Arbitration Committee to settle disputes and grievances which arise under the following circumstances:

(1) Involving interpretations of or disputes over the provisions of the National Master Automobile Transporters Agreement.

(2) Disputes and grievances the determination of which affect an Employer and/or Union operating in two or more of the designated Conference Areas if more than one area is affected by the issue.

(3) Disputes and/or grievances which are deadlocked by any of the two Joint Area Arbitration Committees referred to above.

(4) Disputes and interpretations concerning alleged conflicts in provisions of the National Master Agreement on the one hand and Area Supplements and Riders thereto on the other hand.

The National Automobile Transporters Joint Arbitration Committee shall meet at mutually agreed times and shall formulate rules of procedure to govern the conduct of its proceedings.

[512] Functions of the Automobile Transporters Joint Area Arbitration Committees

(b) It shall be the function of the Automobile Transporters Joint Area Arbitration Committees to settle disputes and grievances which cannot be settled in accordance with Section 2 of this Article.

The Joint Area Arbitration Committees shall meet at mutually agreed times and shall formulate rules of procedure to govern the conduct of their proceedings.

Function of City or State Committee

(c) It shall be the function of the various Local Committees in the appropriate Conference Area above referred to, to settle disputes which cannot be settled by the Employer and the Local Union in accordance with the procedure established herein.

Section 5. Rights of National, Joint Area and Local Arbitration Committees

The Committees shall have the right to investigate all facts pertaining to the dispute. Both parties shall be entitled to present such evidence and witnesses in support of their position as they see fit. A decision by a majority of a Panel of any of the Committees shall be final and binding on all parties, including the employee and/or employees affected.

The Committees referred to above shall have the authority to order full, partial or no compensation in deciding disputes and/or grievances and rendering awards.

Section 6. Board of Arbitration

(a) If any grievance or disagreement is deadlocked by the National Automobile Transporters Joint Arbitration Committee as provided above, then both the Union and the Employer shall submit the grievance to a Board of Arbitration consisting of three (3) members:

One (1) member to be appointed by the Union;

One (1) member, by the Employer; and the

Two (2) together appointing a third disinterested arbitrator.

All grievances submitted to the Board of Arbitration must be heard and disposed of within thirty (30) days. The findings and decision of a majority of the Arbitration Board shall be final and binding on the parties and the employees involved.

(b) It is agreed that the arbitrator is empowered to hear and decide the deadlocked case, even if only one of the parties submits to arbitration, or, if either party fails to appear at the hearing, or to present evidence. The arbitrator shall have the authority to interpret and apply the provisions of this Agreement or Supplements thereto where appropriate, but shall not have the authority to amend or modify this Agreement or Supplements thereto, or establish new terms and conditions under this Agreement or Supplements thereto.

The cost of the arbitrator shall be shared equally by both the local Union and Employer involved.

Section 7. Interpretations

(a) It is agreed that all matters pertaining to the interpretation of any provision of this National Master Agreement, whether requested by the Employer or the

Union, must be submitted to the National Automobile Transporters Joint Arbitration [513] Committee, which Committee, after listening to testimony on both sides, shall make a decision.

(b) It is agreed that all matters pertaining to the interpretation of any provision of a Conference (area) Supplement or Local Rider thereto, whether requested by the Employer or the Union, must be submitted to the appropriate Conference (area) Joint Arbitration Committee, which Committee, after listening to testimony on both sides, shall make a decision.

(c) Any decision of any of the Joint Arbitration Committees referred to above, shall be final and conclusive and binding upon the Employer and the Union, and the employees involved.

ARTICLE 8.

Protection of Rights

Section 1. Picket Line

It shall not be a violation of this Agreement, and it shall not be cause for discharge or disciplinary action in the event an employee refused to enter upon any property involved in a primary labor dispute, or refuses to go through or work behind any primary picket line, including the primary picket line of Unions party to this Agreement, and including primary picket lines at the Employer's places of business.

Section 2. Struck Goods

It shall not be a violation of this Agreement and it shall not be a cause for discharge or disciplinary action if any employee refuses to perform any service which his employer undertakes to perform as an ally of an Em-

ployer or person whose employees are on strike, and which service, but for such strikes, would be performed by the employees of the Employer or person on strike.

Section 3.

Subject to Article 48 (Central Conference Supplement) and Articles 51 and 85 (Western Conference Truckaway and Driveaway Supplements) hereof (Subcontracting), the Employer agrees that it will not cease or refrain from handling, using, transporting, or otherwise dealing in any of the products of any other Employer or cease doing business with any other person, or fail in any obligation imposed by the Motor Carriers' Act or other applicable law, as a result of individual employees exercising their rights under this Agreement or under law, but the Employer shall, notwithstanding any other provision in this Agreement, when necessary, continue doing such business by other employees.

Section 4. Grievances

Within five (5) working days of filing of grievance claiming violation of this Article, the parties to this Agreement shall proceed to the final step of the grievance procedure, without taking any intermediate steps, any other provision of this Agreement to the contrary notwithstanding.

ARTICLE 9.

Bonds

Should the Employer require any employee to give bond, cash bond shall not be compulsory, and any premium involved shall be paid by the Employer. The primary obligation to procure the bond shall be on the Employer. If the Employer cannot arrange for a bond within ninety

(90) days, he must so notify the employee in writing. Failure to so notify shall relieve the employee of the bonding requirement. If proper not-

NATIONAL MASTER AUTOMOBILE TRANSPORTERS AGREEMENT AND CENTRAL CONFERENCE AREA SUPPLEMENTAL AGREEMENTS

covering Truckaway, Driveaway and Local Agreements for the Period June 1, 1967 to June 1, 1970

[515] ARTICLE 7.

Grievance Machinery

Section 1.

The Unions and the Employers agree that there shall be no strike, tie-up of equipment, slowdowns or walkouts on the part of the employees, nor shall the Employer use any method of lockout or legal proceeding without first using all possible means of a settlement, as provided for in this Agreement, of any controversy which might arise.

No Strike and/or Lockout

Any disputes the parties are unable to settle shall be referred to the appropriate Automobile Transporters Joint Area Arbitration Committee, except for the following direct violations, which are non-disputable:

(a) Nonpayment of the established wage rates provided for in this Agreement, Supplements or Riders;

(b) Nonpayment of health and welfare contributions as provided for in this Agreement, Supplements or Riders; and,

(c) Nonpayment of pension contributions as provided for in this Agreement, Supplements or Riders.

(d) This paragraph does not apply to disputes over the computation of wages or application of rates.

Section 2. Grievance Procedure

Disputes and grievances shall first be taken up by the employee involved, and if no settlement is reached, then taken up between the Steward or Business Agent of the Local Union involved and the Employer representative. Disputes and grievances shall be put in writing and presented to the Company within one (1) week, whenever possible, after the grievance arises, but in no case later than thirty (30) days after the grievance arises, except as may be otherwise provided in a supplemental agreement. The Company must reply to the written grievance in writing to the Local Union within fourteen (14) days. The Company must designate its representatives at each terminal who are authorized to settle grievances on the local level and must so notify the Local Unions within one (1) week of the consummation of this Agreement. In the event the authorized representative of the Company or the Union changes during the life of this Agreement, the Company shall notify the Union or the Union shall notify the Company, as the case may be, within one (1) week of such change. After the dispute or grievance is reduced to writing, the said Company representative will make available for inspection by the Business Agents and/or **[516]** Steward, time sheets and such other records as are pertinent to the handling of the specific dispute or grievance. This does not preclude nor prevent an oral

attempt on the part of the Business Agent or Steward to settle such dispute or grievance before a request is made for such record. The dispute or grievance must be settled or deadlocked at the local level within five (5) days, excluding Saturday, Sunday and holidays, after the Business Agent has taken it up. After the five (5) day period but not later than fifteen (15) days, either party has the right to file its grievance with the appropriate Local Committee or Joint Area Arbitration Committee referred to in Section 3 unless extension is mutually agreed to by Company and Local Union. The following procedure shall then apply:

Section 3. National Automobile Transporters Joint Arbitration Committees

(a) The Employers and the Unions from each of the designated Conference areas shall together establish for the duration of this Agreement the National Automobile Transporters Joint Arbitration Committee. Any Panel of the National Joint Arbitration Committee hearing a case shall consist of an equal number of designated representatives of the Employers and the Unions who are parties to this Agreement.

Joint Area Arbitration Committees

(b) The Employers and the Unions, parties to this Agreement, shall together for the duration of this Agreement in the appropriate areas referred to in Article 1, Section 1, establish Automobile Transporters Joint Arbitration Committees to be designated as:

(1) Central Conference Automobile Transporters Joint Arbitration Committee; and

(2) Western Conference Automobile Transporters Joint Arbitration Committee.

(3) Eastern Conference Automobile Transporters Joint Arbitration Committee.

Any panel of a Joint Area Arbitration Committee hearing a case shall consist of an equal number of designated representatives of the Employers and the Unions who are parties to this Agreement from the appropriate area.

Joint State or City Automobile Transporters

Grievance Committees

Central Conference Area

(c)

(1) The Employer and the Union in each city and/or area in the Central Conference where there are three or more Truckaway and/or Driveaway companies, shall together create a permanent Local Joint Committee, which shall consist of an equal number appointed by Employers and Union, but not less than three (3) from each group. Each member may appoint an alternate in his place.

Western Conference Area

(2) The Employers and Local Unions shall agree upon the number of and geographical location of Joint State Automobile Transporters Grievance Committees to function hereunder.

(3) The Local Joint Committee shall at their first meeting formulate rules of procedure to govern the conduct of its proceedings. However, if the Committee fails to agree upon rules **[517]** of procedure, the matter shall be referred to the appropriate Joint Area Arbitration Committee, which Committee shall formulate rules of procedure for the Local Committee. Each Local Joint Committee shall have jurisdiction over disputes and grievances involving said Local Union.

Section 4. Function of National Joint Committee

(a) It shall be the function of the National Automobile Transporters Joint Arbitration Committee to settle disputes and grievances which arise under the following circumstances:

(1) Involving interpretations of or disputes over the provisions of the National Master Automobile Transporters Agreement.

(2) Disputes and grievances the determination of which affect an Employer and/or Union operating in two or more of the designated Conference Areas if more than one area is affected by the issue.

(3) Disputes and/or grievances which are deadlocked by any of the three Joint Area Arbitration Committees referred to above.

(4) Disputes and interpretations concerning alleged conflicts in provisions of the National Master Agreement on the one hand and Area Supplements and Riders thereto on the other hand.

The National Automobile Transporters Joint Arbitration Committee shall meet at mutually agreed times and shall formulate rules of procedure to govern the conduct of its proceedings.

Functions of the Automobile Transporters Joint Area Arbitration Committees

(b) It shall be the function of the Automobile Transporters Joint Area Arbitration Committees to settle disputes and grievances which cannot be settled in accordance with Section 2 of this Article. The Joint Area Arbitration Committees shall meet at mutually agreed times and shall formulate rules of procedure to govern the conduct of their proceedings.

Function of City or State Committee

(c) It shall be the function of the various Local Committees in the appropriate Conference Area above referred to, to settle disputes which cannot be settled by the Employer and the Local Union in accordance with the procedure established herein.

Section 5. Rights of National Joint Area and Local Arbitration Committees

The Committees shall have the right to investigate all facts pertaining to the dispute. Both parties shall be entitled to present such evidence and witnesses in support of their position as they see fit. A decision by a majority of a Panel of any of the Committees shall be final and binding on all parties, including the employee and/or employees affected.

The Committees referred to above shall have the authority to order full, partial or no compensation in deciding disputes and/or grievances and rendering awards.

Section 6. Board of Arbitration

(a) If any grievance or disagreement is deadlocked by the National Automobile Transporters Joint Arbitration Committee as provided above, then both the Union and the Employer shall submit the grievance to a Board of Arbitration consisting of three (3) members:

One (1) member to be appointed by the Union;

One (1) member, by the Employer; and the

[518] Two (2) together appointing a third disinterested arbitrator.

All grievances submitted to the Board of Arbitration must be heard and disposed of within thirty (30) days. The findings and decision of a majority of the Arbitration

Board shall be final and binding on the parties and the employees involved.

(b) It is agreed that the arbitrator is empowered to hear and decide the deadlocked case, even if only one of the parties submits to arbitration, or, if either party fails to appear at the hearing, or to present evidence. The arbitrator shall have the authority to interpret and apply the provisions of this Agreement or Supplements thereto where appropriate, but shall not have the authority to amend or modify this Agreement or Supplements thereto, or establish new terms and conditions under this Agreement or Supplements thereto.

The cost of the arbitrator shall be shared equally by both the Local Union and Employer involved.

Section 7.

(a) It is agreed that all matters pertaining to the interpretation of any provision of this National Master Agreement, whether requested by the Employer or the Union, must be submitted to the National Automobile Transporters Joint Arbitration Committee, which Committee, after listening to testimony on both sides, shall make a decision.

(b) It is agreed that all matters pertaining to the interpretation of any provision of a Conference (area) Supplement or Local Rider thereto, whether requested by the Employer or the Union, must be submitted to the appropriate Conference (area) Joint Arbitration Committee, which Committee, after listening to testimony on both sides, shall make a decision.

(c) Any decision of any of the Joint Arbitration Committees referred to above, shall be final and conclusive and binding upon the Employer and the Union, and the employees involved.

Section 8.

Failure of either party involved to comply with any final decision of a panel of any Joint Committee established under this Article shall give the other party the immediate right to all legal and economic recourse.

Section 9.

The procedure set forth in the Local, State and Area grievance machinery and in the national grievance procedure may be invoked only by the authorized Union representative or by the Employer. Authorized representatives of the Union may file grievances alleging violation of this Agreement under local grievance procedure. Time limitations regarding the filing of grievances, if not set forth in the respective Supplemental Agreements, must appear in the Rules of Procedure of the various grievance committees and shall apply equally to Employers and employees.

Section 10.

Unless otherwise expressly provided in this Agreement, any and all disputes, including interpretations of contract provisions arising under, out of, in connection with, or in relation to this collective bargaining agreement, shall be subject to the grievance procedure of the Agreement.

Section 11.

All meetings of Joint Committees referred to in this Article must be attended by each member of such committee or his alternate.

. . .

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3560 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 432 For Room

No. 9 (Date) 5/23/67

From James Felty Pollock

THANK YOU

J. D. Rizzini
CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3560 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 432 For Room

No. 7 (Date) 5/23/67

From Art Cartwright

THANK YOU

J. D. Rizzini
CLERK

Art Cartwright

REGISTRATION CARD

NAME James Felty Pollock

STREET

CITY Lewisburg STATE Ohio

REPRESENTING Graham Motor

Car License State

Make of Car No. in Party 2

NOTICE TO GUESTS:—This property is privately owned and management reserves right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind.

Date 5/23/67 Rate Total 10 00

Tax (if any) 40

Form No. 11 — Butler Enterprises, Inc., Winston-Salem, N. C. Amount Paid 10 40

ROOM 9

NAME

DAYS OCCUPIED

TOTAL RATE

SUMMARY OF DRIVER EXPENSES

DATE	SIGNATURE OF PAYEE	DESCRIPTION	BILL #	TOTAL AMT.	1 NIGHT	2 NIGHT	3 NIGHT	TOLLS Ohio Turnpike	TOLLS Turnpike	FOR ACCOUNTING PURPOSES ONLY 4143	4161	4250	4260	5210	5211	4640	
5/21	[illegible]	[illegible] Motor Hotel	[illegible]	[illegible]	[illegible]											2.81	3.67 748
"	[illegible] Ball	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]											
"	[illegible]	Statler Springs, N.Y.	[illegible]	[illegible]	[illegible]												
"	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]												
"	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]												
"	[illegible]	Fish	[illegible]	2.84										2.84			
"	[illegible]	[illegible] N.Y.	[illegible]	.95											.95		.95
"	[illegible]	[illegible] N.Y.	[illegible]	1.20				1.20									488
"	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]												631
"	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]												
"	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				.20								1188
"	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]												488
"	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]				.20								1134
"	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]												425
	TOTAL			[illegible]	[illegible]	[illegible]		[illegible]	[illegible]					[illegible]			17

ASC 530R — Dispatcher — Clerk — Approved — Grand Total

236

521

DRIVER'S DAILY LOG

FORM BMC 59 Prescribed by the INTERSTATE COMMERCE COMMISSION Washington, D.C. Rev. '62

(One Calendar Day—24 Hours)

Form Approved: Budget Bureau No. 60-R132
ORIGINAL - File Each Day at Home Terminal.
DUPLICATE - Driver Retains on His Possession for 8 Days.

BB

LOG DAY NO. 23

5 (Month) 23 (Day) 62 (Year)

14 1/4 (Total mileage today)

250 (Total miles driving today)

47556 47422 47556 (Vehicle numbers—Show each unit)

Drivers shall keep the log current to the time of the last change of duty status. Failure to make required entries herein, falsification of entries, or failure to have on hand duly executed prior records for the current and previous 7 consecutive days may render driver and/or carrier liable to prosecution.

I certify that these entries are true and correct: (Driver's signature in full)

ANCHOR MOTOR FREIGHT, INC. (Name of carrier or carriers)

Available Hrs. Tomorrow 13 Signature

(Name of co-driver)

CLEVELAND, OHIO (Main Office Address)

(Home Terminal Address)

	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	MID-NIGHT	TOTAL HOURS
1. OFF DUTY																										14
2. SLEEPER BERTH																										7
3. DRIVING																										3
4. ON DUTY (Not Driving)																										10

Total Lines 3 & 4

REMARKS

Bill No. 696404

Shipping document, manifest number, or name of a shipper and commodity. Information required by Section 195.8 (O). Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain access hours-Section 195.8 (O).

FROM: Lordstown Ohio (Starting Point or Place) TO: Akron Falls N.Y. (Destination or Turn Around Point or Place)

FROM: (Starting Point or Place) TO: (Destination or Turn Around Point or Place)

USE TIME STANDARD AT HOME TERMINAL

SUMMARY

A. DRIVING HOURS TODAY 7 TOTAL LINE 3

B. TOTAL HOURS ON DUTY 15 3/4 LAST 8 or 7 DAYS (COL. 3 INSIDE FRONT COVER) INCLUDING TODAY

C. TOTAL HOURS ON DUTY 57 1/2 LAST 7 or 6 DAYS (COL. 4 INSIDE FRONT COVER) INCLUDING TODAY

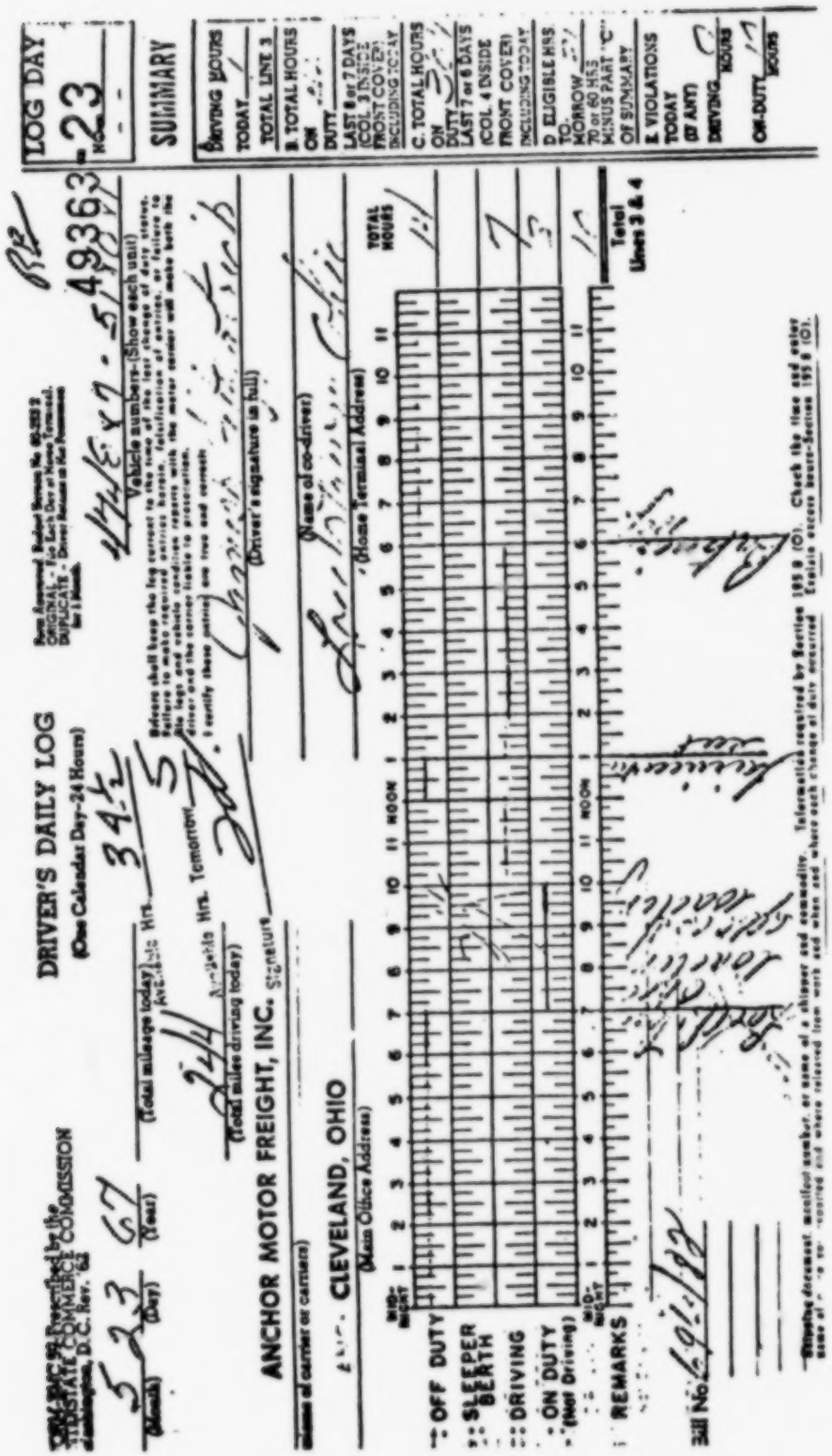
D. ELIGIBLE HRS. TO MORROW 13 1/2 70 or 60 HRS MINUS PART "C" OF SUMMARY

E. VIOLATIONS TODAY (IF ANY) DRIVING HOURS ON-DUTY HOURS SEE REMARKS

51250 A

237

BEST COPY AVAILABLE



LOG DAY No. 23

SUMMARY

DRIVER'S DAILY LOG

(One Calendar Day—24 Hours)

ANCHOR MOTOR FREIGHT, INC.

CLEVELAND, OHIO

OFF DUTY
SLEEPER BERTH
DRIVING
ON DUTY (Not Driving)
REMARKS

Total Lines 3 & 4

522

523

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 932 For Room

No. 10 (Date) 5/10/67

From

THANK YOU

CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 932 For Room

No. 9 (Date) 5/10/67

From

THANK YOU

CLERK

REGISTRATION CARD

NAME

STREET

CITY STATE

REPRESENTING

Car License State

Make of Car No. in Party

NOTICE TO GUESTS:—This property is privately owned and management reserves right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind.

Date 5/10/67 Rate Total 12 00

Tax (if any) 48

Amount Paid 12 48

DAYS OCCUPIED — NOON 9

Form No. 11 — Butler Enterprises, Inc., Winston-Salem, N. C.

5-11-67

EXHIBIT 20

SUMMARY OF DRIVER EXPENSES

DATE	SIGNATURE OF PAYEE	DESCRIPTION	BILL #	TOTAL AMT.	1 NIGHT	2 NIGHT	3 NIGHT	TOLLS Bridge Ferry Tunnel	TOLLS Turn-pike	FOR ACCOUNTING PURPOSE ONLY 4143	4161	4250	4260	5210	5211	4640	
	C Rudnicki	TRST Loading		4.00						4.00							4.00
	Cicirelli	Buffalo N.Y.	69287	1.20				1.20									
	Cecil	Clerk Tonawanda N.Y.	69345	16.00	10.00			1.20	4.80								
	Wenzinger	Williamsville N.Y.	69305	9.23	7.25			1.20	.85								
	A Fuchsia	Buffalo N.Y.	69215	1.90				1.20	.60								
	J Gregory	Detroit, Mich.	69347	5.50	5.00											.50	5.00
	Fancelli	Rochester N.Y.	69338	11.20	8.32								1.82		.06		1.88
	Wells C.	Rochester N.Y.	69340	8.32	6.32												
	TOTAL			56.35	38.92			1.80	6.25	4.00			1.82		.06	.50	1.38
					38.92			11.05									

AEC 530R — Dispatcher — Box # — Approved — Grand Total 56.19 — 56.35

RETURN LEWIS

RETURN LEWIS T.

RETURN LEWIS

506

486

524

240

525

241

DRIVER'S DAILY LOG

(One Calendar Day-24 Hours)

Form Approved, Budget Bureau No. 40-R22.2
ORIGINAL - File Each Day at Home Terminal.
DUPLICATE - Driver Retains on Her Possession for 8 Days.

FHWA-BMCS Prescribed by the INTERSTATE COMMERCE COMMISSION
Washington, D. C. Rev. '62

5 (Month) 10 (Day) 67 (Year)

(Total mileage today) 15

275 (Total miles driving today)

Total Hrs. 9 1/2

Total Hrs. Tomorrow

Signature

53881 — Vehicle numbers-(Show each unit)

Drivers shall keep the log current to the time of the last change of duty status. Failure to make required entries herein, falsification of entries, or failure to file logs and vehicle condition reports with the motor carrier will make both the driver and the carrier liable to prosecution.

I certify these entries are true and correct:

(Driver's signature in full)

ANCHOR MOTOR FREIGHT, INC.

(Name of carrier or carriers)

CLEVELAND, OHIO

(Main Office Address)

(Name of co-driver)

Lordstown Ohio

(Home Terminal Address)

LOG DAY NO. 10

SUMMARY

A. DRIVING HOURS TODAY — TOTAL LINE 3

B. TOTAL HOURS ON DUTY — LAST 8 or 7 DAYS (COL. 3 INSIDE FRONT COVER) INCLUDING TODAY

C. TOTAL HOURS ON DUTY — LAST 7 or 6 DAYS (COL. 4 INSIDE FRONT COVER) INCLUDING TODAY

D. ELIGIBLE HRS. TO-MORROW — 70 or 60 HRS. MINUS PART "C" OF SUMMARY

E. VIOLATIONS TODAY (IF ANY) DRIVING HOURS — ON-DUTY HOURS — SEE REMARKS

$1298 Δ

	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	MID-NIGHT	TOTAL HOURS
1. OFF DUTY																										1 1/2
2. SLEEPER BERTH																										1/2
3. DRIVING																										7
4. ON DUTY (Not Driving)																										9 1/2

Total Lines 3 & 4

REMARKS

Bill No. 1.99406

Lordstown Loading Dock

Transmission Repair

Lordstown Loading Dock

Rest

Shipping d., manif. manifest numbe.. or name of a shipper and commodity. Information required by Section 195.8 (f). Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours-Section 195.8 (f).

FROM: Lordstown Ohio (Starting Point or Place) TO: Rochester NY (Destination or Turn Around Point or Place)

FROM: (Starting Point or Place) TO: (Destination or Turn Around Point or Place)

USE TIME STANDARD AT HOME TERMINAL

526

DRIVER'S DAILY LOG

(One Calendar Day—24 Hours)

CMC-BMC 59 Rev. "A" — Interstate Commerce Commission — Washington, D.C. Rev. '62

Form Approved, Budget Bureau No. 60-S512.2
ORIGINAL – File Each Day at Home Terminal.
DUPLICATE – Driver Retains as Part Permanent for 1 Month.

LOG NO. 53886-1

5 (Month) 10 (Day) 67 (Year)

(Total mileage today) 32

(Total miles driving today) 29

Vehicle numbers—(Show each unit)

Drivers shall keep the log current to the time of the last change of duty status. Failure to make required entries hereon, falsification of entries, or failure to file logs and vehicle condition reports with the motor carrier will make both the driver and the carrier liable to prosecution.

I certify these entries are true and correct:

(Driver's signature in full)

ANCHOR MOTOR FREIGHT, INC.
(Name of carrier or carriers)

CLEVELAND, OHIO
(Main Office Address)

(Name of co-driver)

(Home Terminal Address)

MID-NIGHT 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11 MID-NIGHT — TOTAL HOURS

1 OFF DUTY
2 SLEEPER BERTH
3 DRIVING
4 ON DUTY (Not Driving)

REMARKS

Total Lines 3 & 4

Bill No. 193527

Shipping document, manifest number, or name of a shipper and commodity. Information required by Section 195.8 (0). Check the time and enter name of place you reported and where relieved from work and when and where each change of duty occurred. Explain excess hours-Section 195.8 (0).

FROM: (Starting Point or Place) TO: (Destination or Turn Around Point or Place)

FROM: (Starting Point or Place) TO: (Destination or Turn Around Point or Place)

USE TIME STANDARD AT HOME TERMINAL

SUMMARY

A. DRIVING HOURS TODAY — TOTAL LINE 3

B. TOTAL HOURS ON DUTY LAST 8 or 7 DAYS (COL. 3 INSIDE FRONT COVER) INCLUDING TODAY

C. TOTAL HOURS ON DUTY LAST 7 or 6 DAYS (COL. 4 INSIDE FRONT COVER) INCLUDING TODAY

D. ELIGIBLE HRS. TO MORROW 70 or 60 HRS MINUS PART "C" OF SUMMARY

E. VIOLATIONS TODAY (IF ANY)
DRIVING HOURS
ON-DUTY HOURS

SEE REMARKS

81296 Δ

242

243

527

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 8.32 For Room

No. 6 (Motel) 5/15/67

From R. Hinman

THANK YOU

CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 8.32 For Room

No. 6 (Motel) 5/15/67

From R. Hinman

THANK YOU

CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 8.32 For Room

No. 7 (Motel) 5/15/67

From D.O. Brockwell

THANK YOU

CLERK

REGISTRATION CARD

NAME

STREET

CITY State

No. Adults No. in Party

Make of Car Car License State

NOTICE TO GUESTS.—This property is privately owned and management reserves right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind.

Date Rate Total

Tax (If any)

Form No. 11 — Butler Enterprises, Inc., Winston-Salem, N. C. Amount Paid

ROOM / MAKE / DAYS OCCUPIED / TOTAL DUE

528

FORM BMC 59 Prescribed by the INTERSTATE COMMERCE COMMISSION Washington, D.C. Rev. '62

DRIVER'S DAILY LOG

(One Calendar Day—24 Hours)

Form Approved, Budget Bureau No. 60-R372.3
ORIGINAL - File Each Day at Home Terminal.
DUPLICATE - Driver Retains in His Possession for 1 Month.

83

LOG NO. 1

SUMMARY

5 (Month) 15 (Day) 67 (Year) — (Total mileage today) 10

Available Hrs. 200 (Total miles driving today) Hrs. Tomorrow 5

4822-141 53802 Vehicle numbers-(Show each unit)

Drivers shall keep the log current to the time of the last change of duty status. Failure to make required entries herein, falsification of entries, or failure to file logs and vehicle condition reports with the motor carrier will make both the driver and the carrier liable to prosecution.

I certify these entries are true and correct

Ex-1.. Evans Collins (Driver's signature in full)

ANCHOR MOTOR FREIGHT, INC. (Name of carrier or carriers)

Signature

(Name of co-driver)

CLEVELAND, OHIO (Main Office Address)

Fort Stanton Ohio (Home Terminal Address)

	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	MID-NIGHT	TOTAL HOURS
1: OFF DUTY																										12½
2: SLEEPER BERTH																										
3: DRIVING																										4
4: ON DUTY (Not Driving)																										3½
REMARKS																										7½

Total Lines 3 & 4

Bill No. 694656

Shipping document, manifest number, or name of a shipper and commodity. Information required by Section 195.8 (O). Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours-Section 195.8 (O).

FROM: Fort Stanton, Ohio (Starting Point or Place) TO: Winston-Salem, N.C. (Destination or Turn Around Point or Place)

FROM: (Starting Point or Place) TO: (Destination or Turn Around Point or Place)

USE TIME STANDARD AT HOME TERMINAL

SUMMARY

A. DRIVING HOURS TODAY 11 — TOTAL LINE 3

B. TOTAL HOURS ON DUTY 12½ — LAST 8 or 7 DAYS (COL. 3 INSIDE FRONT COVER) INCLUDING TODAY

C. TOTAL HOURS ON DUTY — LAST 7 or 6 DAYS (COL. 4 INSIDE FRONT COVER) INCLUDING TODAY

D. ELIGIBLE HRS. TO MORROW 70 or 60 HRS MINUS PART "C" OF SUMMARY

E. VIOLATIONS TODAY (IF ANY) DRIVING HOURS ON-DUTY HOURS

SEE REMARKS

81298 A

244

529

FORM BMC 59 Prescribed by the INTERSTATE COMMERCE COMMISSION Washington, D.C. Rev. '62

DRIVER'S DAILY LOG

(One Calendar Day—24 Hours)

Form Approved, Budget Bureau No. 60-R372.3
ORIGINAL - File Each Day at Home Terminal.
DUPLICATE - Driver Retains in His Possession for 1 Month.

RB

LOG NO. 15

SUMMARY

5 - 15 - 67 (Month) (Day) (Year) — (Total mileage today) 19¼

Available Hrs. 216 (Total miles driving today) Hrs. Tomorrow 5½

53758 47798-62577 Vehicle numbers-(Show each unit)

Drivers shall keep the log current to the time of the last change of duty status. Failure to make required entries herein, falsification of entries, or failure to file logs and vehicle condition reports with the motor carrier will make both the driver and the carrier liable to prosecution.

I certify these entries are true and correct

John Burtner G. Johnson (Driver's signature in full)

ANCHOR MOTOR FREIGHT, INC. (Name of carrier or carriers)

Signature

(Name of co-driver)

CLEVELAND, OHIO (Main Office Address)

Fort Stanton, Ohio (Home Terminal Address)

	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	MID-NIGHT	TOTAL HOURS
1: OFF DUTY																										14½
2: SLEEPER BERTH																										5¼
3: DRIVING																										4½
4: ON DUTY (Not Driving)																										9½
REMARKS																										

Total Lines 3 & 4

Bill No. 694385

Shipping document, manifest number, or name of a shipper and commodity. Information required by Section 195.8 (O). Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours-Section 195.8 (O).

FROM: Fort Stanton, Ohio (Starting Point or Place) TO: E. Winston-Salem, N.C. (Destination or Turn Around Point or Place)

FROM: (Starting Point or Place) TO: (Destination or Turn Around Point or Place)

USE TIME STANDARD AT HOME TERMINAL

SUMMARY

A. DRIVING HOURS TODAY — TOTAL LINE 3

B. TOTAL HOURS ON DUTY 60½ — LAST 8 or 7 DAYS (COL. 3 INSIDE FRONT COVER) INCLUDING TODAY

C. TOTAL HOURS ON DUTY — LAST 7 or 6 DAYS (COL. 4 INSIDE FRONT COVER) INCLUDING TODAY

D. ELIGIBLE HRS. TO MORROW 70 or 60 HRS MINUS PART "C" OF SUMMARY

E. VIOLATIONS TODAY (IF ANY) DRIVING HOURS ON-DUTY HOURS

SEE REMARKS

81298 A

245

530

FMC-BMC 59 Prescribed by the INTERSTATE COMMERCE COMMISSION Washington, D.C. Rev. '62

DRIVER'S DAILY LOG

(One Calendar Day-24 Hours)

Form Approved Budget Bureau No. 60-S73.2
ORIGINAL - File Each Day at Home Terminal.
DUPLICATE - Driver Retains at Non-Powered for 1 Month.

OB

LOG DAY NO. 15

SUMMARY

5 (Month) - 15 (Day) - 67 (Year)

(Total mileage today) 1½

4996-16 5003 55339

224 Beg. Hrs.

(Total miles driving today)

Vehicle numbers-(Show each unit)

Drivers shall keep the log current to the time of the last change of duty status. Failure to make required entries herein, falsification of entries, or failure to file logs and vehicle condition reports with the motor carrier will make both the driver and the carrier liable to prosecution.

I certify these entries are true and correct.

Ends Hrs. Tomorrow

Signature

(Driver's signature in full)

ANCHOR MOTOR FREIGHT, INC.

(Name of carrier or carriers)

(Name of co-driver)

CLEVELAND, OHIO

(Main Office Address)

(Home Terminal Address)

	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	TOTAL HOURS
1: OFF DUTY																									17
2: SLEEPER BERTH																									
3: DRIVING																									5
4: ON DUTY (Not Driving)																									2
REMARKS																									7

Total Lines 3 & 4

Bill No. 694552

Shipping document, manifest number, or name of a shipper and commodity. Information required by Section 195.8 (O). Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours-Section 195.8 (O).

FROM: Toledo, Town (Ohio) (Starting Point or Place) TO: Worcester N.Y. (Destination or Turn Around Point or Place)

FROM: (Starting Point or Place) TO: (Destination or Turn Around Point or Place)

USE TIME STANDARD AT HOME TERMINAL

SUMMARY

A DRIVING HOURS TODAY 5 TOTAL LINE 3

B TOTAL HOURS ON DUTY 6 5-6 LAST 6 or 7 DAYS (COL. 3 INSIDE FRONT COVER) INCLUDING TODAY

C TOTAL HOURS ON DUTY 5 2 LAST 7 or 6 DAYS (COL. 4 INSIDE FRONT COVER) INCLUDING TODAY

D ELIGIBLE HRS. TO MORROW 12 70 or 60 HRS MINUS PART "C" OF SUMMARY

E VIOLATIONS TODAY (IF ANY) DRIVING HOURS ON-DUTY HOURS SEE REMARKS

SL298 A

246

531

FMC-BMC 59 Prescribed by the INTERSTATE COMMERCE COMMISSION Washington, D.C. Rev. '62

DRIVER'S DAILY LOG

(One Calendar Day-24 Hours)

Form Approved Budget Bureau No. 60-S73.2
ORIGINAL - File Each Day at Home Terminal.
DUPLICATE - Driver Retains at Non-Powered for 1 Month.

TCB

LOG DAY NO. 16

SUMMARY

5 (Month) 16 (Day) 67 (Year)

(Total mileage today)

274

(Total miles driving today)

4822-1.41 53802

Vehicle numbers-(Show each unit)

Drivers shall keep the log current to the time of the last change of duty status. Failure to make required entries herein, falsification of entries, or failure to file logs and vehicle condition reports with the motor carrier will make both the driver and the carrier liable to prosecution.

I certify these entries are true and correct.

(Driver's signature in full)

ANCHOR MOTOR FREIGHT, INC.

(Name of carrier or carriers)

(Name of co-driver)

CLEVELAND, OHIO

(Main Office Address)

(Home Terminal Address)

	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	TOTAL HOURS
1: OFF DUTY																									
2: SLEEPER BERTH																									
3: DRIVING																									
4: ON DUTY (Not Driving)																									
REMARKS																									9

Total Lines 3 & 4

Bill No. 694556 Put

722195

Shipping document, manifest number, or name of a shipper and commodity. Information required by Section 195.8 (O). Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours-Section 195.8 (O).

FROM: (Starting Point or Place) TO: (Destination or Turn Around Point or Place)

FROM: (Starting Point or Place) TO: (Destination or Turn Around Point or Place)

USE TIME STANDARD AT HOME TERMINAL

SUMMARY

A DRIVING HOURS TODAY TOTAL LINE 3

B TOTAL HOURS ON DUTY 7 1/2 LAST 6 or 7 DAYS (COL. 3 INSIDE FRONT COVER) INCLUDING TODAY

C TOTAL HOURS ON DUTY LAST 7 or 6 DAYS (COL. 4 INSIDE FRONT COVER) INCLUDING TODAY

D ELIGIBLE HRS. TO MORROW 70 or 60 HRS MINUS PART "C" OF SUMMARY

E VIOLATIONS TODAY (IF ANY) DRIVING HOURS ON-DUTY HOURS SEE REMARKS

SL298 A

247

5-16-.7

EXHIBIT 1

SUMMARY OF DRIVER EXPENSES

532

DATE	SIGNATURE OF PAYEE	DESCRIPTION	BILL #	TOTAL AMT.	1 NIGHT	2 NIGHT	3 NIGHT	TOLLS Bridge Ferry Tunnel	TOLLS Turnpike	FOR ACCOUNTING PURPOSES ONLY 4143	4161	4250	4260	5210	5211	4640	
5/16	[illegible]	Lansing, Mich	[illegible]	7.21	7.21												5 5 6
"	[illegible]	Rochester, N.Y.	[illegible]	9.52	8.32			1.20									4.88
"	[illegible]	Fairborn, Ohio	[illegible]	5.15	5.15												468
"	[illegible]	Anderson, Ind	[illegible]	9.17	9.17												641
"	[illegible]	Dowagiac, Mich	[illegible]	10.92	10.92												701
"	[illegible]	Rochester, N.Y.	[illegible]	8.32	8.32												504
"	[illegible]	Lafayette, Ind	[illegible]	10.47	1.12				4.20								734
"	[illegible]	Sawmill Town	[illegible]	14.48	8.24	6.24											
"	[illegible]	Cadillac, Mich	[illegible]	8.84	8.84												488
"	[illegible]	Rochester, N.Y.	[illegible]	8.32	1.12												
"	[illegible]	Clarkston, Pa	[illegible]	1.00						1.00							1.00
"	N.W. Parts	Buffalo, N.Y.	[illegible]	.60					.60								
1	[illegible]	Buffalo, N.Y.	[illegible]	.30					.30								
"	[illegible]	Lewiston, N.Y.	[illegible]	12.00	7.35			.60	4.05								Lewiston, N.Y.
	TOTAL			106.46	87.97	6.24		1.80	9.45	1.00							1.00
					94.21			11.25									1.00

ASC 530R

Dispatcher

Box #

Approved

Grand Total 106.46

248

SUMMARY OF DRIVER EXPENSES

533

DATE	SIGNATURE OF PAYEE	DESCRIPTION	BILL #	TOTAL AMT.	1 NIGHT	2 NIGHT	3 NIGHT	TOLLS Bridge Ferry Tunnel	TOLLS Turnpike	FOR ACCOUNTING PURPOSES ONLY 4143	4161	4250	4260	5210	5211	€
5/17	[illegible]	Rochester, N.Y.	694052	2.36						.95			1.36		.05	
"	[illegible]	Rock Haven, Pa	727195	15.52	6.80	8.72		1.20								
"	[illegible]	Terry Town, N.Y.	677962	17.30	6.80			4.50	6.00							
"	[illegible]	Rochester, N.Y.	694767	8.32	8.32											
"	[illegible]	St Clairsville, Ohio	694778	1.25				1.25								
"	[illegible]	Killbuck, Ohio	678771	1.42								.42		.14	.10	
"	[illegible]	Buffalo, N.Y.	695055	.85					.85							
"	[illegible]	Niagara Falls, N.Y.	694999	.60				.60								
	TOTAL			47.93	29.04	8.72		14.90	.85	.95		.42	1.36	.14	.15	

ASC 530R

Dispatcher

Box #

Approved

Grand Total 47

249

534

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 832 For Room

No. 12 (Date) 5/24/67

From B. Hines

THANK YOU

J. D Rylance CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 432 For Room

No. 9 (Date) 5/24/67

From Eugene Aldam

THANK YOU

J. D Rylance CLERK

REGISTRATION CARD

NAME Eugene Aldam & B Hines

STREET Woodland Lane

CITY Mentor Hills STATE Ohio

REPRESENTING Anchor Motor Freight

Car License State

Make of Car No. in Party 2

NOTICE TO GUESTS:—This property is privately owned and management reserves right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind.

Date 5/24/67 Rate Total 12 00

Tax (if any) 48

Amount Paid 1248

ROOM BOOK 9

DAYS OCCUPIED

Form No. 11 — Butler Enterprises, Inc., Winston-Salem, N. C.

LOG DAY 24

SUMMARY

DRIVER'S DAILY LOG
(One Calendar Day—24 Hours)

Form Approved: Bureau No. 60-R293
ORIGINAL - File Each Day at Home Terminal
DUPLICATE - Driver Retains in His Possession for 7 Days

Drivers shall keep the log current to the last change of duty status. Failure to make required entries, or false entries, or failure to file logs and submit them to employer within the meter carrier will make both the driver and the carrier liable to prosecution.

I certify these entries are true and correct.

(Driver's signature in full)

(Name of co-driver)

(Home Terminal Address)

ANCHOR MOTOR FREIGHT, INC.
(Name of carrier or carriers)

CLEVELAND, OHIO
(Main Office Address)

1: OFF DUTY
2: SLEEPER BERTH
3: DRIVING
4: ON DUTY (Not Driving)

REMARKS

Total Lines 3 & 4

Bill No. 496733

Shipping document, manifest number, or name of a shipper and commodity. Information required by Sect. a 191.8 (c). Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain access hours-Section 195.8 (c).

FROM: (Starting Point or Place)

TO: (Destination or Turn Around Point or Place)

TO: (Destination or Turn Around Point or Place)

FROM: (Starting Point or Place)

TO: TERMINAL

USE TIME STANDARD AT HOME TERMINAL

Form BMC 93 Prescribed by the INTERSTATE COMMERCE COMMISSION Washington, D.C. Rev. 62

5-24-67 (Date)

(Total mileage today)

(Total miles driving today)

Tomorrow's Hrs.

Signature

FORM BMC 59 Prescribed by the INTERSTATE COMMERCE COMMISSION Washington, D.C. Rev. '62

DRIVER'S DAILY LOG

(One Calendar Day—24 Hours)

Form Approved Budget Bureau No. 60-R372
ORIGINAL - File Each Day at Home Terminal.
DUPLICATE - Driver Retains as His Permanent Record for 1 Month.

KB

LOG No. 2

5 (Month) 24 (Day) 67 (Year)

(Total mileage today)

4975-5015 53802

Vehicle numbers-(Show each unit)

14½ Available Hrs.

222 (Total miles driving today)

9 Available Hrs. Tomorrow

Drivers shall keep the log current to the time of the last change of duty status. Failure to make required entries herein, falsification of entries, or failure to file logs and vehicle condition reports with the motor carrier will make both the driver and the carrier liable to prosecution.

I certify these entries are true and correct

Signature

Everett Fisher

(Driver's signature in full)

ANCHOR MOTOR FREIGHT, INC.

(Name of carrier or carriers)

(Name of co-driver)

CLEVELAND, OHIO

(Main Office Address)

Sandstown Ohio

(Home Terminal Address)

MID-NIGHT 1 2 3 4 5 6 7 8 9 10 11 NOON 1 2 3 4 5 6 7 8 9 10 11 MID-NIGHT

TOTAL HOURS

OFF DUTY 14½

SLEEPER BERTH

DRIVING

ON DUTY (Not Driving)

REMARKS

Total Lines 3 & 4

No. 696785

Sandstown Ohio Left Depot Battery Sandstown Ohio Left Slight Pa Batavia Ind Rest

Shipping document, manifest number, or name of shipper and commodity. Information required by Section 195.8 (01). Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours-Section 195.8 (01).

Sandstown Ohio (Starting Point or Place) TO: Macedon N.Y. (Destination or Turn Around Point or Place)

(Starting Point or Place) TO: (Destination or Turn Around Point or Place)

USE TIME STANDARD AT HOME TERMINAL

SUMMARY

A. DRIVING HOURS TODAY 9

TOTAL LINE 3

B. TOTAL HOURS ON DUTY 14.5

LAST 8 or 7 DAYS (COL. 3 INSIDE FRONT COVER) INCLUDING TODAY

C. TOTAL HOURS ON DUTY 56

LAST 7 or 6 DAYS (COL. 4 INSIDE FRONT COVER) INCLUDING TODAY

D. ELIGIBLE HRS. TO-MORROW 14

70 or 60 HRS. MINUS PART "C" OF SUMMARY

E. VIOLATIONS TODAY (IF ANY)

DRIVING HOURS

ON-DUTY HOURS

SEE REMARKS

$1298 Δ

536

252

5-31-67

SUMMARY OF DRIVER EXPENSES

RE	SIGNATURE OF PAYEE	DESCRIPTION	BILL #	TOTAL AMT.	1 NIGHT	2 NIGHT	3 NIGHT	TOLLS (Ferry Tunnel)	TOLLS (Turn-pike)	FOR ACCOUNTING PURPOSE ONLY 4143	4161	4250	4260	5210	5211	4640-	
	E Everett	Wilmington Del	697135	35.23	6.91											26.83	26.83 Plow
	G Hammell	Nashville Tenn	697462	23.78	7.21	8.29			6.25								
	Chas Walker	Chattanooga Tenn	696909	17.56	9.24	8.32											
	S Frombso	Cumberland Md	697239	9.89	8.29				1.60								
	Pixley	Grand Rapids Mich	697955	8.24	8.24												
	Richard	Nashville Tenn	696883	21.43	8.29	8.29			4.95								
	Robert Jones	Flint Mich	691920	7.28	7.28												
	[illegible]	Midland Mich	697666	7.28	7.28												
	R Poland	Huron Ohio	697191	3.00						3.00							3.00
	Hatley	Louisville Ky	697291	6.83	6.18				.65								
	Lemaster	Towanda Pa	695[illegible]	6.30	6.30												
	Ward	London Ky	[illegible]	5.13	5.13												
	E Gilligan	Macedon N.Y.	696785	9.92	8.32				1.10								
	L Davis	Fish Kill N.Y.	697196	9.87	8.32				1.55								
	E Eckstein	Scottsville Mich	697269	8.32	8.32												
	TOTAL			176.45	103.72	24.80			18.10	3.00						26.83	29.83
				176.45	128.52			18.10									29.83

Tom Howard
Dispatcher

Box #

M. Day
Approved

Grand Total 176.45

JC 430R

253

BEST COPY AVAILABLE

538

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 932 For Room

No. 6 (Date) 5/22/67

From E. Allen

THANK YOU

J. D. Rogers
CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 832 For Room

No. 5 (Date) 5/22/67

From Burt Hines

THANK YOU

J. D. Rogers
CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 832 For Room

No. 7 (Date) 5/22/67

From C. Rogers

THANK YOU

J. D. Rogers
CLERK

E. Allen & C. Rogers

REGISTRATION CARD

NAME Burt Hines ROOM 5

STREET

CITY Fostoria STATE Ohio

REPRESENTING Anchor Motor Freight

Car License State

Make of Car No. in Party 3

NOTICE TO GUESTS:—This property is privately owned and management reserves right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind.

Date 5/22/67 Rate Total 15 00 60

Tax (if any)

Form No. 11 — Butler Enterprises, Inc., Winston-Salem, N. C. Amount Paid 15 60

DAYS OCCUPIED

Scott Visitor

LOG DAY 22

49359

SUMMARY

DRIVER'S DAILY LOG
(One Calendar Day—24 Hours)

ANCHOR MOTOR FREIGHT, INC.

CLEVELAND, OHIO

OFF DUTY
SLEEPER BERTH
DRIVING
ON DUTY (Not Driving)

REMARKS

TO:

USE TIME STANDARD AT HOME TERMINAL

BEST COPY AVAILABLE

FORM BMC 59 Prescribed by the INTERSTATE COMMERCE COMMISSION Washington, D.C. Rev. '62

DRIVER'S DAILY LOG

(One Calendar Day—24 Hours)

Form Approved Bureau No. 60-S132
ORIGINAL - File Each Day at Home Terminal
DUPLICATE - Driver Retains in His Possession for 8 Days

BB

LOG DAY NO. 22

5 - 22 - 67
(Month) (Day) (Year)

(Total mileage today) Available Hrs. 15 1/4

222 Available Hrs. Tomorrow 9 1/2
(Total miles driving today)

4975 T - 5015 T 53758
Vehicle numbers-(Show each unit)

Drivers shall keep the log correct to the time of the last change of duty status. Failure to make required entries hereon, falsification of entries, or failure to file logs and vehicle condition reports with the motor carrier will make both the driver and the carrier liable to prosecution.

I certify these entries are true and correct.

ANCHOR MOTOR FREIGHT, INC. Signature W. Bertram C. Thomas
(Name of carrier or carriers) (Driver's signature in full)

(Name of co-driver)

CLEVELAND, OHIO
(Main Office Address)

Londonderry, Ohio
(Home Terminal Address)

	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	TOTAL HOURS
1: OFF DUTY																									10 1/2
2: SLEEPER BERTH																									
3: DRIVING																									5 1/2
4: ON DUTY (Not Driving)																									4
REMARKS																									0 1/2

Total Lines 3 & 4

Bill No. 696103

Shipping document, manifest number, or name of shipper and commodity. Information required by Section 195.8 (b). Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours-Section 195.8 (b).

FROM: Londonderry, Ohio (Starting Point or Place) TO: Wilmington, N.C. (Destination or Turn Around Point or Place)

FROM: (Starting Point or Place) TO: (Destination or Turn Around Point or Place)

USE TIME STANDARD AT HOME TERMINAL

SUMMARY

A. DRIVING HOURS TODAY — TOTAL LINE 3
B. TOTAL HOURS ON DUTY 6 of 7 — LAST 8 or 7 DAYS (COL. 3 INSIDE FRONT COVER) INCLUDING TODAY
C. TOTAL HOURS ON DUTY — LAST 7 or 6 DAYS (COL. 4 INSIDE FRONT COVER) INCLUDING TODAY
D. ELIGIBLE HRS. TOMORROW — 70 or 60 HRS MINUS PART "C" OF SUMMARY
E. VIOLATIONS TODAY (IF ANY) DRIVING HOURS ON-DUTY HOURS
SEE REMARKS

51298 A

540

256

FORM BMC 59 Prescribed by the INTERSTATE COMMERCE COMMISSION Washington, D.C. Rev. '62

DRIVER'S DAILY LOG

(One Calendar Day—24 Hours)

Form Approved Bureau No. 60-S132
ORIGINAL - File Each Day at Home Terminal
DUPLICATE - Driver Retains in His Possession for 8 Days

BB

LOG DAY NO. 22

5 22 67
(Month) (Day) (Year)

(Total mileage today) Available Hrs. 17 1/2

222 Available Hrs. Tomorrow 7 1/2
(Total miles driving today)

4830-5175 53802
Vehicle numbers-(Show each unit)

Drivers shall keep the log correct to the time of the last change of duty status. Failure to make required entries hereon, falsification of entries, or failure to file logs and vehicle condition reports with the motor carrier will make both the driver and the carrier liable to prosecution.

I certify these entries are true and correct.

ANCHOR MOTOR FREIGHT, INC. Signature Eugene Colban
(Name of carrier or carriers) (Driver's signature in full)

(Name of co-driver)

CLEVELAND, OHIO
(Main Office Address)

Londonderry, Ohio
(Home Terminal Address)

	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	TOTAL HOURS
1: OFF DUTY																									14
2: SLEEPER BERTH																									
3: DRIVING																									1 1/4
4: ON DUTY (Not Driving)																									4
REMARKS																									10

Total Lines 3 & 4

Bill No. 691231

Shipping document, manifest number, or name of shipper and commodity. Information required by Section 195.8 (b). Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours-Section 195.8 (b).

FROM: Londonderry Ohio (Starting Point or Place) TO: E. Rochester N.H. (Destination or Turn Around Point or Place)

FROM: (Starting Point or Place) TO: (Destination or Turn Around Point or Place)

USE TIME STANDARD AT HOME TERMINAL

SUMMARY

A. DRIVING HOURS TODAY 12 — TOTAL LINE 3
B. TOTAL HOURS ON DUTY — LAST 8 or 7 DAYS (COL. 3 INSIDE FRONT COVER) INCLUDING TODAY
C. TOTAL HOURS ON DUTY — LAST 7 or 6 DAYS (COL. 4 INSIDE FRONT COVER) INCLUDING TODAY
D. ELIGIBLE HRS. TOMORROW — 70 or 60 HRS MINUS PART "C" OF SUMMARY
E. VIOLATIONS TODAY (IF ANY) DRIVING HOURS ON-DUTY HOURS
SEE REMARKS

51298 A

541

257

SUMMARY OF DRIVER EXPENSES

DATE	SIGNATURE OF PAYER	DESCRIPTION	BILL #	TOTAL AMT.	1 NIGHT	2 NIGHT	3 NIGHT	TOLLS Ferry	TOLLS Tunnel	TOLLS Turn-pike	FOR ACCOUNTING PURPOSES ONLY 4143	4161	4250	4260	5210	5211	4640
5-22		Hamilton, Ohio	176531	7 18	7 18												
"	Ed Pearsey	Wilkinsburg, Pa	19643	7 85	7 85												
"	C. D. Woodruff	Delphos, Ohio	175814	10 32	10 32												
"		Danville, Ill	175821	7 12	7 12												
"	E. Gilbert	Binghamton, N.Y.	176201	8 32	8 32												
"	C. Croft	Rochester, N.Y.	175916	8 32	8 32												
"	G. Smith	Niagara Falls, N.Y.	176032	55													
"	D. Smith	Buffalo, N.Y.	175859	8 32													
"	A. M. Bush	Rochester, N.Y.	175751	8 32	8 32												
"	J. Klein	Utica, N.Y.	176102	8 32	8 32												
"	D. Atkins	Rochester, N.Y.	175872	9 32	9 32												
"	C. Dascent	Rochester, N.Y.	176020	8 32	8 32												
		TOTAL		92 32	78 32												

Grand Total

Approved

Box #

Dispatcher

542

543

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 8 32 For Room

No. 6 (Date) 5/23/67

From NIAGARA FALLS N.Y.

THANK YOU

J. D. Pulsifer
CLERK

Towne Manor Motel and Apts.
471 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 8 32 For Room

No. 10 (Date) 5/23/67

From GRAYDON H. CROFT

THANK YOU

J. D. Pulsifer
CLERK

REGISTRATION CARD Niagara Falls N.Y.

NAME GRAYDON H. CROFT

STREET

CITY LORDSTOWN ? STATE OHIO

REPRESENTING ANCHOR MOTOR FREIGHT

Chr License State

Make of Car No. in Party 2

NOTICE TO GUESTS:—This property is privately owned and management reserves right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind.

Date 5/23/67 Rate Total 16 00

Tax (if any) 40

Form No. 11 — Butler Enterprises, Inc., Winston-Salem, N. C. Amount Paid 10 40

ROOM 10 NAME

DAYS OCCUPIED

544

FORM BMC 59 Prescribed by the INTERSTATE COMMERCE COMMISSION Washington, D.C. Rev. '62

DRIVER'S DAILY LOG

(One Calendar Day—24 Hours)

Form Approved Budget Bureau No. 60-S53.2
ORIGINAL - File Each Day at Home Terminal
DUPLICATE - Driver Retains in His Possession for 1 Month.

RB

LOG DAY NO. 23

SUMMARY

5 (Month) 23 (Day) 67 (Year)

(Total mileage today)

4690 -177 53157

Vehicle numbers-(Show each unit)

10½ available Hrs.

231 (Total miles driving today)

12 available Hrs. Tomorrow

Drivers shall keep the log current to the time of the last change of duty status. Failure to make required entries herein, falsification of entries, or failure to file logs and vehicle condition reports with the motor carrier will make both the driver and the carrier liable to prosecution.

I certify these entries are true and correct.

Signature

Charles H. Bright

(Driver's signature in full)

ANCHOR MOTOR FREIGHT, INC.

(Name of carrier or carriers)

(Name of co-driver)

CLEVELAND, OHIO

(Main Office Address)

Loudonville Ohio

(Home Terminal Address)

	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	MID-NIGHT	TOTAL HOURS
1: OFF DUTY																										16½
2: SLEEPER BERTH																										0
3: DRIVING																										5
4: ON DUTY (Not Driving)																										2½
REMARKS																										7½

Total Lines 3 & 4

Bill No. 696343

Loudonville Ohio Loading — Lunch — Pressure tire RF — Batavia NY Swift

Shipping document, manifest number, or name of shipper and commodity. Information required by Section 195.8 (D). Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours-Section 195.8 (D).

FROM: Loudonville Ohio (Starting Point or Place) TO: Rochester NY (Destination or Turn Around Point or Place)

FROM: (Starting Point or Place) TO: Painfield Pulaski (Destination or Turn Around Point or Place)

USE TIME STANDARD AT HOME TERMINAL

A. DRIVING HOURS TODAY 5
TOTAL LINE 3
B. TOTAL HOURS ON DUTY 47
LAST 8 or 7 DAYS (COL. 3 INSIDE FRONT COVER) INCLUDING TODAY
C. TOTAL HOURS ON DUTY 55
LAST 7 or 6 DAYS (COL. 4 INSIDE FRONT COVER) INCLUDING TODAY
D. ELIGIBLE HRS. TO-MORROW 12
70 or 60 HRS. MINUS PART "C" OF SUMMARY
E. VIOLATIONS TODAY (IF ANY)
DRIVING 0 HOURS
ON-DUTY 0 HOURS
SEE REMARKS

81298 A

260

545

FORM BMC 59 Prescribed by the INTERSTATE COMMERCE COMMISSION Washington, D.C. Rev. '62

DRIVER'S DAILY LOG

(One Calendar Day—24 Hours)

Form Approved Budget Bureau No. 60-S53.2
ORIGINAL - File Each Day at Home Terminal
DUPLICATE - Driver Retains in His Possession for 1 Month.

RB

LOG DAY NO. 23

SUMMARY

5-23-67 (Month) (Day) (Year)

(Total mileage today)

4831-5178 49405

Vehicle numbers-(Show each unit)

2½ available Hrs.

205 (Total miles driving today)

12 available Hrs. Tomorrow

Drivers shall keep the log current to the time of the last change of duty status. Failure to make required entries herein, falsification of entries, or failure to file logs and vehicle condition reports with the motor carrier will make both the driver and the carrier liable to prosecution.

I certify these entries are true and correct.

Signature RB

Harold W. Ruth

(Driver's signature in full)

ANCHOR MOTOR FREIGHT, INC.

(Name of carrier or carriers)

(Name of co-driver)

CLEVELAND, OHIO

(Main Office Address)

Loudonville, Ohio

(Home Terminal Address)

	MID-NIGHT	1	2	3	4	5	6	7	8	9	10	11	NOON	1	2	3	4	5	6	7	8	9	10	11	MID-NIGHT	TOTAL HOURS
1: OFF DUTY																										13
2: SLEEPER BERTH																										
3: DRIVING																										5
4: ON DUTY (Not Driving)																										1
REMARKS																										6

Total Lines 3 & 4

Bill No. 691471

Loudonville, Ohio Loading — Lunch at Kingsville, Ohio — Batavia, N.Y.

Shipping document, manifest number, or name of shipper and commodity. Information required by Section 195.8 (D). Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours-Section 195.8 (D).

FROM: Loudonville, Ohio (Starting Point or Place) TO: Rochester, N.Y. (Destination or Turn Around Point or Place)

FROM: (Starting Point or Place) TO: (Destination or Turn Around Point or Place)

USE TIME STANDARD AT HOME TERMINAL

A. DRIVING HOURS TODAY 6
TOTAL LINE 3
B. TOTAL HOURS ON DUTY 52
LAST 8 or 7 DAYS (COL. 3 INSIDE FRONT COVER) INCLUDING TODAY
C. TOTAL HOURS ON DUTY
LAST 7 or 6 DAYS (COL. 4 INSIDE FRONT COVER) INCLUDING TODAY
D. ELIGIBLE HRS. TO-MORROW
70 or 60 HRS. MINUS PART "C" OF SUMMARY
E. VIOLATIONS TODAY (IF ANY)
DRIVING HOURS
ON-DUTY HOURS
SEE REMARKS

81298 A

261

SUMMARY OF DRIVER EXPENSES

DATE	SIGNATURE OF PAYEE	DESCRIPTION	BILL #	TOTAL AMT.	1 NIGHT	2 NIGHT	3 NIGHT	TOLLS Ferry (tunnel)	TOLLS Turn-pike	FOR ACCOUNTING PURPOSES ONLY 4143	4161	4250	4260	5210	5211	4640	
5/24	J. Wellington	Rochester Mail	196411	10.40	10.40											2.50	2.50
"	L. Ball	Scottsville	195177	17.63	17.63												
"	[illegible]	Silver Springs Md	[illegible]	10.82	10.82												
"	[illegible]	Lit. Falls N.Y.	[illegible]	5.15	5.15												
"	[illegible]	Utica N.Y.	[illegible]	5.15	5.15												
"	[illegible]	Elba	[illegible]	2.85										2.85			
"	[illegible]	Lowville N.Y.	[illegible]	.95											.95		.95
"	[illegible]	[illegible]ville N.Y.	[illegible]	1.20				1.20									
"	[illegible]	[illegible] N.Y.	[illegible]	5.10	5.10												
"	[illegible]	Silver Springs N.Y.	[illegible]	8.24	5.24												
"	[illegible]	Utica N.Y.	[illegible]	5.15	5.15												
"	[illegible]	Rochester N.Y.	[illegible]	9.72	8.22				1.50								
"	[illegible]	Rochester N.Y.	[illegible]	8.22	8.22												
"	[illegible]	Rochester N.Y.	[illegible]	9.72	8.64			.60	.50								
"	[illegible]	Rochester N.Y.	[illegible]	8.22	8.22												
	TOTAL			111.91	94.88	9.00		1.80	.60					2.85	.95	2.50	3.45
					104.72			3.42									379

AMC 530R

R. Robertson
Dispatcher

Box #

M. Brown
Approved

Grand Total 111 91

262

SUMMARY OF DRIVER EXPENSES

DATE	SIGNATURE OF PAYEE	DESCRIPTION	BILL #	TOTAL AMT.	1 NIGHT	2 NIGHT	3 NIGHT	TOLLS Ferry (tunnel)	TOLLS Turn-pike	FOR ACCOUNTING PURPOSES ONLY 4143	4161	4250	4260	5210	5211	4640	
5/24	J.W. Wilson	E. Rochester N.Y.	196499	7.09	8.84				.25								
"	[illegible]	Scottsville N.Y.	[illegible]	1.00					1.00								
"	[illegible]	Williamsville N.Y.	[illegible]	1.18	1.18												
"	Walter Parrish	Rochester N.Y.	196471	9.22	8.22				1.00								
	TOTAL			24.09	13.34				2.75								

547

AMC 530R

R. Robertson
Dispatcher

Box #

M. Brown
Approved

Grand Total

263

548

Towne Manor Motel and Apts.
671 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 7:26 For Room

No. 10 (Date) 4/14/67

From Vincent Pizzuro

THANK YOU

J. D Pifarini
CLERK

Towne Manor Motel and Apts.
671 W. MAIN STREET
Phone FI 3-3360 — Batavia, New York

11:00 A.M. IS CHECKING OUT TIME. GUESTS DESIRING TO OCCUPY ROOM LATER WILL MAKE ARRANGEMENTS AT OFFICE. GUESTS STAYING OVER PLEASE NOTIFY OFFICE.

Received 7:26 For Room

No. 3 (Date) 4/14/67

From B HINES

THANK YOU

J. D Pifarini
CLERK

REGISTRATION CARD

NAME Vincent Pizzuro

STREET

CITY Fostoria STATE Ohio

REPRESENTING Chester Foster Freight

Car License State

Make of Car No. In Party 2

NOTICE TO GUESTS:—This property is privately owned and management reserves right to refuse service to anyone, and will not be responsible for accidents or injury to guests or for loss of money, jewelry or valuables of any kind.

Date 4/14/67 Rate Total 12.00

Tax (if any) .40

Form No. 11 — Butler Enterprises, Inc., Winston-Salem, N. C. Amount Paid 12 40

ROOM 10 MADE

DAYS OCCUPIED

LOG DAY NO 14

SUMMARY

DRIVING HOURS TODAY
TOTAL LINE 3
8 TOTAL HOURS ON DUTY LAST 8 or 7 DAYS (COL 3 INSIDE FRONT COVER) INCLUDING TODAY
C TOTAL HOURS ON DUTY LAST 7 or 5 DAYS (COL 4 INSIDE FRONT COVER) INCLUDING TODAY
D ELIGIBLE HRS TO MORROW 70 or 60 HRS MINUS PART "C" OF SUMMARY
E VIOLATIONS TODAY (IF ANY) DRIVING HOURS ON-DUTY HOURS
SEE REMARKS

DRIVER'S DAILY LOG
(One Calendar Day—24 Hours)

Name of carrier or carriers: ANCHOR MOTOR FREIGHT, INC.
Main Office Address: CLEVELAND, OHIO

Total miles driving today: 318
Total mileage today: 318
Vehicle numbers: 40842 & 48042

Name of co-driver: Vincent Pizzuro
Home Terminal Address: Scottsville, Ky.
Driver's signature in full: J. D Pifarini

Total Lines 3 & 4: 11½

OFF DUTY
SLEEPER BERTH
DRIVING
ON DUTY (Not Driving)

REMARKS

Bill No. 67685

FROM: Louisville, Ky. TO: Fostoria, Ohio
(Starting Point or Place) (Destination or Turn Around Point or Place)

FROM: TO:
(Starting Point or Place) (Destination or Turn Around Point or Place)

USE TIME STANDARD AT HOME TERMINAL

Form BMC 59 Prescribed by the INTERSTATE COMMERCE COMMISSION Washington, D. C. Rev. '62

DRIVER'S DAILY LOG

(One Calendar Day-24 Hours)

Form Approved Budget Bureau No. 60-R53.2
ORIGINAL - File Each Day at Home Terminal
DUPLICATE - Driver Retains in His Possession for 1 Month.

RB 53699

LOG DAY NO. 14

SUMMARY

54 (Month) 11 (Day) 67 (Year) _____ (Total mileage today)

456-352 Vehicle numbers-(Show each unit)

265 (Total miles driving today) 14½ Hrs

Drivers shall keep the log current to the time of the last change of duty status. Failure to make required entries herein, falsification of entries, or failure to file logs and vehicle condition reports with the motor carrier will make both the driver and the carrier liable to prosecution.

I certify these entries are true and correct.

Available Hrs Tomorrow 11

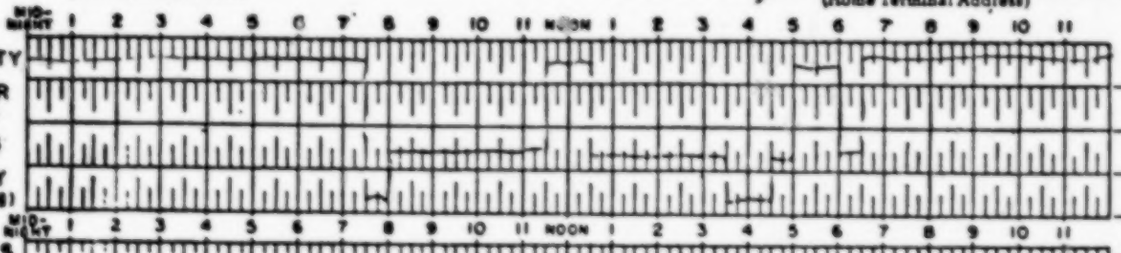
ANCHOR MOTOR FREIGHT, INC.
(Name of carrier or carriers)

Signature RB
(Driver's signature in full)

CLEVELAND, OHIO
(Main Office Address)

(Name of co-driver)

(Home Terminal Address)



A. DRIVING HOURS TODAY 7½ TOTAL LINE 3

B. TOTAL HOURS ON DUTY 63½ LAST 8 or 7 DAYS (COL. 3 INSIDE FRONT COVER) INCLUDING TODAY

C. TOTAL HOURS ON DUTY 57 11/2 LAST 7 or 6 DAYS (COL. 4 INSIDE FRONT COVER) INCLUDING TODAY

D. ELIGIBLE HRS. TO-MORROW 7½ 70 or 60 HRS MINUS PART "C" OF SUMMARY

E. VIOLATIONS TODAY (IF ANY) DRIVING ____ HOURS ON-DUTY ____ HOURS SEE REMARKS

81298 A

Mill No. Yours Le 10 Le

Shipping document, manifest number, or name of a shipper and commodity. Information required by Section 195.8 (O). Check the time and enter name of place you reported and where released from work and when and where each change of duty occurred. Explain excess hours-Section 195.8 (O).

FROM: Cleveland Ohio (Starting Point or Place) TO: Rochester N.Y. (Destination or Turn Around Point or Place)

FROM: _____ (Starting Point or Place) TO: _____ (Destination or Turn Around Point or Place)

USE TIME STANDARD AT HOME TERMINAL

SUMMARY OF DRIVER EXPENSES

DATE	SIGNATURE OF PAYEE	DESCRIPTION	BILL #	TOTAL AMT.	1 (CASH)	2 (CASH)	3 (CASH)	TOLLS (Tel. Telegr. Ferry Bridge)	Turnpike	FOR ACCOUNTING PURPOSE ONLY 4143	4161	4250	4260	5210	5211
									2.55						
												2.50		1.40	.80
				9.79					.95						
									2.05						
	TOTAL			110.61					7.55			2.80		1.43	.81

John Grant
Dispatcher

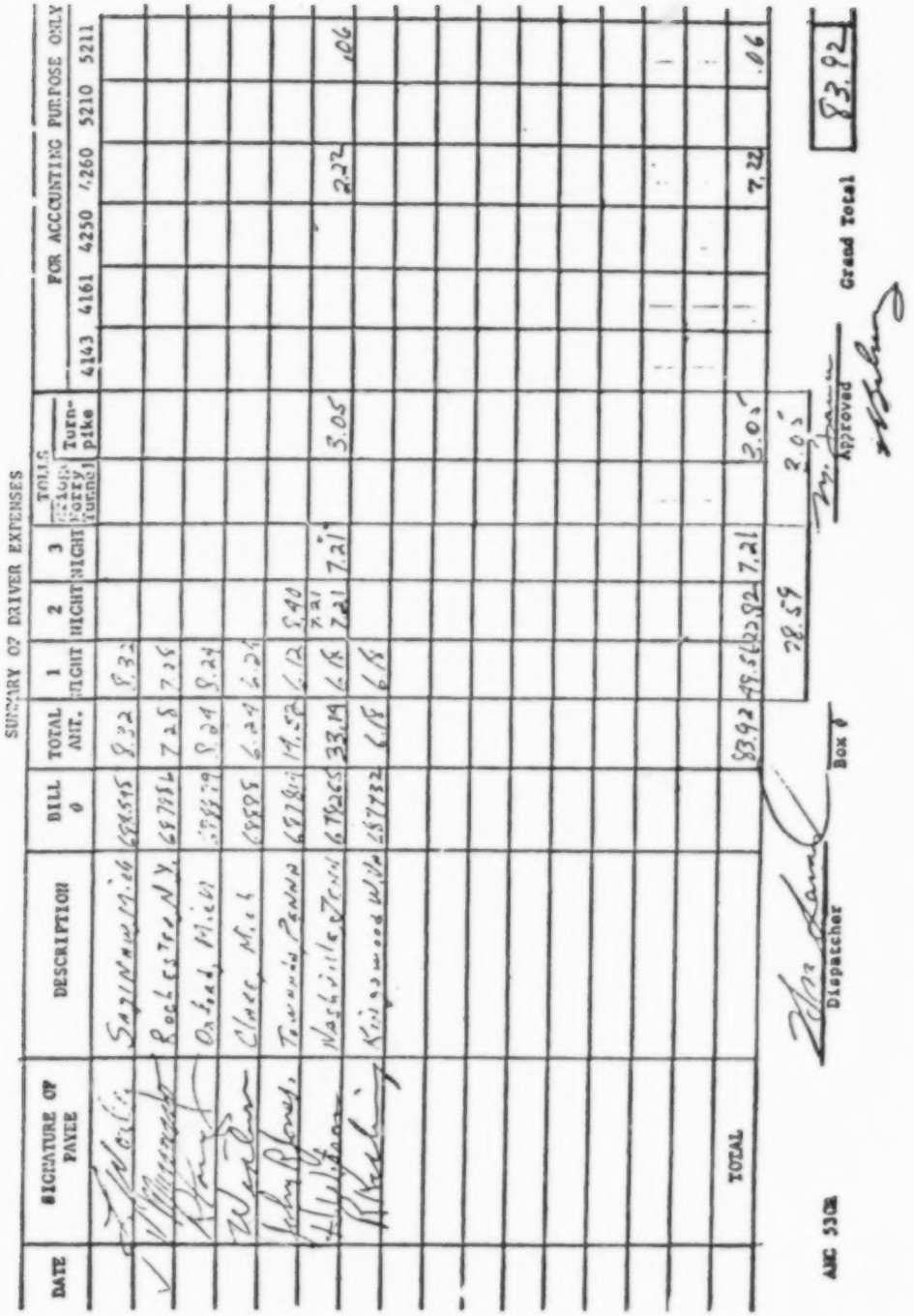
Box #

Approved

Grand Total 110.61

AW 5308

20



BEST COPY AVAILABLE

[618] NATIONAL LABOR RELATIONS BOARD

Region 8
1695 Federal Office Building
1240 East Ninth Street
Telephone: 522-3715 Cleveland, Ohio 44199

January 9, 1968

Lauren D. Rachlin
Attorney-at-Law
Suite 1212 Genesee Building
One West Genesee Street
Buffalo, New York 14202

Re: Anchor Motor Freight, Inc.
Case No. 8-CA-4848

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 377 (Anchor Motor Freight, Inc.)
Case No. 8-CB-1217

Dear Mr. Rachlin:

The above-captioned cases charging violations under Section 8 of the National Labor Relations Act, as amended, have been carefully investigated and considered.

As a result of the investigation, it appears that because there is insufficient evidence of violation, further proceedings are not warranted at this time. I am, therefore, refusing to issue complaint in these matters.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel of the National Labor Relations Board, Washington, D. C. 20570 and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which

it is based. The appeal must be received by the General Counsel in Washington, D. C., by the close of business on January 22, 1968. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request for extension of time should be submitted to me.

Very truly yours,

/s/ Carroll L. Martin
Carroll L. Martin
Acting Regional Director

cc: General Counsel, N.L.R.B., Washington, D. C. 20570
Bernard Goldfarb, 1625 Illuminating Bldg., Cleveland, O. 44113

Lindsay E. Worley, 3312 Red Fox Run Dr., Warren, O. 44483

Anchor Motor Freight, Inc., Lordstown Plant, Box 69, Warren, O.

Int'l Bro. of Teamsters, Loc. 377, 1223 W. Federal St., Youngstown, O. 44502

Eugene Green, Atty, 602 Stambaugh Bldg., Youngstown, O.

REGISTERED MAIL

RETURN RECEIPT REQUESTED

[619] NATIONAL LABOR RELATIONS BOARD
Office of the General Counsel
Washington, D. C. 20570

April 1, 1968

Re: Anchor Motor Freight, Inc.
Case No. 8-CA-4848

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 377
(Anchor Motor Freight, Inc.)
Case No. 8-CB-1217

Lauren D. Rachlin, Esq.
Rachlin and Rachlin
Suite 1212, Genesee Building
Buffalo, New York 14202

Dear Mr. Rachlin:

Your appeal from the refusal to issue complaint in the captioned cases, charging violations under Section 8 of the National Labor Relations Act, has been duly considered.

The appeal is denied. Under the circumstances, including the four month interval between the strike and the discharges, the fact that other participants in the strike, some of whom were equally or more active than the alleged discriminatees, have continued to work without discrimination, and the fact that the Company had received evidence of the employees' dishonesty, the burden could not be sustained of establishing that the employees had been discharged for any reason other than the Company's good faith belief of their dishonesty. Furthermore, in these circumstances, and in view of the Union's actions in obtain-

ing the reinstatement of the employees pending arbitration and a rehearing for the presentation of additional evidence obtained by the employees' counsel after the initial adverse decision, and the fact that the employees were present at both hearings and allowed to present their own defenses at the first hearing, insufficient basis existed for a finding that the Union failed to represent them properly.

Very truly yours,

Arnold Ordman
General Counsel

By /s/ Irving M. Herman
Director, Office of Appeals

CERTIFIED MAIL

[620] cc: Director, Region 8

Bernard Goldfarb, Esq., 1625 Illuminating Bldg., Cleveland, Ohio 44113

Mr. Lindsay E. Worley, 3312 Red Fox Run Dr., Warren, Ohio

Anchor Motor Freight, Inc., Lordstown Plant, Box 69, Warren, Ohio

IBT, Local 377, 1223 W. Federal St., Youngstown, Ohio 44502

Eugene Green, Esq., 602 Stanbaugh Bldg., Youngstown, Ohio

[621] NATIONAL LABOR RELATIONS BOARD
Office of the General Counsel
Washington, D.C. 20570

May 7, 1968

Re: Anchor Motor Freight, Inc.
Case No. 8-CA-4848

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 377
(Anchor Motor Freight, Inc.)
Case No. 8-CB-1217

Lauren D. Rachlin, Esq.
Rachlin and Rachlin
Suite 1212, Genesee Building
Buffalo, New York 14202

Dear Mr. Rachlin:

This is in response to your letter of April 23, 1968, requesting reconsideration of our decision denying your appeal from the Regional Director's refusal to issue complaint in the above matter.

Section 102.19 of the Rules and Regulations, in setting out an exception to the requirement that a motion for reconsideration must be filed within 10 days following service of the decision on appeal refers to ". . . newly discovered evidence *which has become available only since the decision on appeal* . . . ." (Emphasis supplied.) As there is no showing that the determination by the Ohio Bureau of Unemployment Compensation was not available

prior to the decision on appeal, your request for reconsideration is untimely and must be rejected.

Very truly yours,

Arnold Ordman
General Counsel

By /s/ Irving M. Herman
Director, Office of Appeals

[622] cc: Director, Region 8

Bernard Goldfarb, Esq., 1625 Illuminating Bldg., Cleveland, Ohio 44113

Mr. Lindsay E. Worley, 3312 Red Fox Run Dr., Warren, Ohio

Anchor Motor Freight, Inc., Lordstown Plant, Box 69, Warren, Ohio

IBT, Local 377, 1223 W. Federal St., Youngstown, Ohio 44502

Eugene Green, Esq., 602 Stambaugh Bldg., Youngstown, Ohio

[623]

UNITED STATES DISTRICT COURT
Northern District of Ohio
Eastern Division

(Title omitted in printing)

AFFIDAVIT OF NEILL L. THOMAS FOR MOTION FOR SUMMARY JUDGMENT ON BEHALF OF DEFENDANT, ANCHOR MOTOR FREIGHT, INC.

State of Ohio,
Cuyahoga County, ss:

Neill L. Thomas, being first duly sworn deposes and states of his own free will and knowledge that he arranged for the transportation of Anthony Pagano from Batavia, New York, to Cleveland, Ohio, and to Warren, Ohio, with a view to Mr. Pagano's testifying in certain Unemployment Compensation cases involving Anchor Motor Freight, Inc., and that your Affiant made these arrangements as a representative of Anchor Motor Freight, Inc., and that Mr. Pagano did arrive in Cleveland, Ohio, and did register at the Holiday Inn, 26300 Chagrin Boulevard, Beachwood, Ohio, on September 29, 1968, and did depart on September 30, 1968, and that your Affiant arranged to pay for his transportation, motel, and personal expenses to Anthony Pagano in the amount of Twenty-Three Dollars ($23.00). Your Affiant further states that this was his first interview with Mr. Pagano and that there were not any other interviews.

[624] Attached hereto to substantiate the dates in which Mr. Anthony Pagano appeared in Cleveland, Ohio, and was escorted to Warren, Ohio, and then to Youngstown, Ohio, from whence he returned to Batavia, New York, for the dates of September 29, 1968, and September 30,

1968, attached hereto and incorporated herein by reference are the following:

Exhibit 1: Check signed by Neill L. Thomas and paid to Anthony Pagano dated September 30, 1968, in the amount of $23.00.

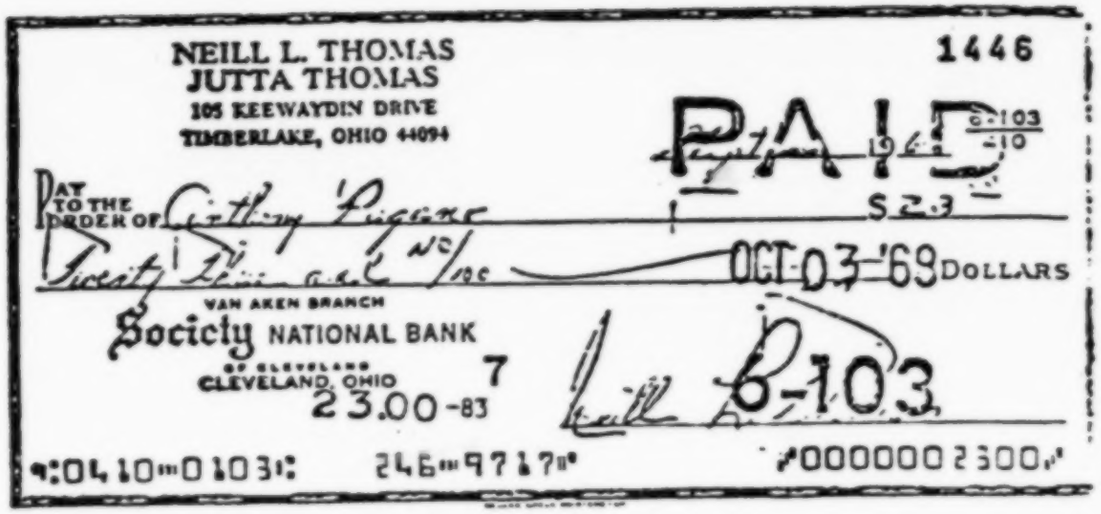
Exhibit 2: Hotel register card dated September 29, 1968, in which Anthony Pagano registered.

Exhibit 3: American Express receipt for payment of Holiday Inn charges for A. Pagano in the amount of $13.34.

Affiant further sayeth naught.

/s/ Neill L. Thomas

(Jurat of May 2, 1972 omitted in printing)


NEILL L. THOMAS
JUTTA THOMAS
105 KEEWAYDIN DRIVE
TIMBERLAKE, OHIO 44094

1446

PAID

PAY TO THE ORDER OF Anthony Pagano $23.00

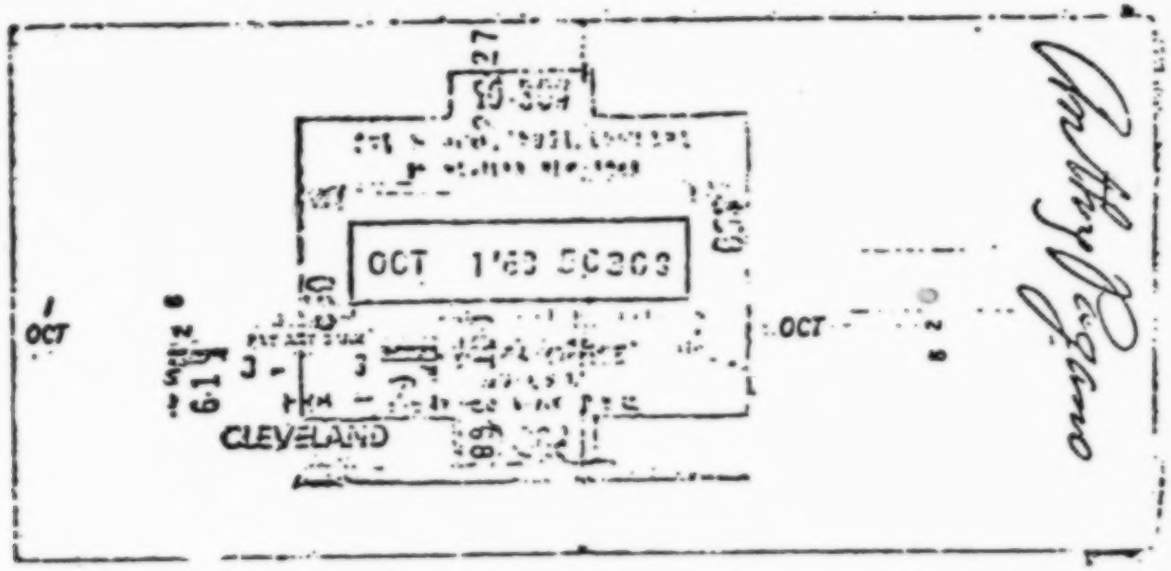
Society Financial Mgt Inc OCT 03 '69 DOLLARS

VAN AKEN BRANCH
Society NATIONAL BANK
OF CLEVELAND
CLEVELAND, OHIO

23.00-83

Neill L. Thomas

:0410=0103: 246=9717= #000002300#



Anthony Pagano

BEST COPY AVAILABLE

CONFORMED [CONFORMED] CONFORMED

ROOM 269 | 4/30 | GUESTS 1

PAGANO M.

BATAVIA NY

163 JACKSON ct

FOLIO NUMBER SH-B [illegible]3

PHONE OUT 129

PHONE IN 129

DATE	REFERENCE	CHARGES	CREDITS	BALANCE	PICKUP
SEP 29	LDIST 269	C* .86		* .86	C* .86
SEP 29	ROOM 264	C* 12.00			
SEP 29	TAX 264	C* .48		* 13.34 *	

CHECKED CASHIER

MON | TUES | WED | THURS | FRI | SAT | SUN

Holiday Inn OF SHAKER HEIGHTS/BEACHWOOD

TELEPHONE (216) 831-5150

26300 CHAGRIN BLVD.
BEACHWOOD, OHIO 44122

ROOM 269 RATE 12.00 TAX .48 NO. PERSONS 1

009 043 951 4 200

BELL & THOMAS TRANSPORTATION INC
AK for R PAGANO

	01
	00
	6%

HOLIDAY INN
9913416832 BCH
8834937259 WOOD
3340534910 CH

$ 9 30 68

X [signature]

MERCHANDISE AND/OR SERVICE PURCHASED ON THIS CREDIT-CARD SHALL NOT BE RESOLD OR RETURNED FOR CASH REFUND.

13 34

CARDHOLDER COPY

INVOICE NUMBER 153325

CHARGE RECORD

Supreme Court, U. S.
FILED
MAR 14 1975
MICHAEL RODAK, JR., CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1025

BURTICE A. HINES, et al.,
Petitioners,

vs.

ANCHOR MOTOR FREIGHT, INC., et al.,
Respondents.

BRIEF OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS IN OPPOSITION TO PETITION FOR CERTIORARI

DAVID LEO UELMEN
GOLDBERG, PREVIANT & UELMEN
211 West Wisconsin Avenue
Milwaukee, Wisconsin 53203

KNEE, SNYDER & PARKS
11 West Monument Building
Dayton, Ohio 45402

GREEN, SCHIAVONI, MURPHY & HAYNES
602 Stambaugh Building
Youngstown, Ohio 44503

Attorneys for Respondent Unions

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

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SUPREME COURT OF THE UNITED STATES

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vs.

ANCHOR MOTOR FREIGHT, INC., et al.,
Respondents.

BRIEF OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT OF THE CASE

The petitioners are former employees of Anchor Motor Freight who were discharged for dishonesty—turning in motel receipts for reimbursement in a sum greater than that which they actually paid for lodging. One specific motel in Batavia, New York was involved.

The motel is owned by a carpenter who owns and operates the motel at which 60-90 drivers stay each month (R 444). The discrepancy was discovered by supervisors working for

Anchor Motor Freight. Records and affidavits were secured by Anchor from the owner of the motel and from the motel clerk. Registration cards showing the amount paid by the drivers were compared with receipts turned in by the drivers to Anchor. (R 421, 421, 422, 423-426)

At a meeting in the Local Union offices, Anchor confronted the drivers and the union representatives with these documents and stated that the men would be discharged. This discharge would have been effectuated immediately but for the fact that the Union threatened a strike if Anchor did not agree to retain the employees on the payroll until after the hearing was held before the Joint Arbitration Panel. (R 562)

At the hearing all parties, drivers, union agents and the employer were present and presented their testimony and evidence. (R 74, 76, 81) The arbitration panel sustained the discharge of the drivers.

Subsequently, the petitioners sent an attorney to New York to visit the motel owner and secured an affidavit from the motel owner which denied personal knowledge of the handling of the funds and imputed all personal knowledge to his clerk. (R 452) No second or amended statement was secured from the room clerk by petitioner's counsel for submission to the Arbitration Panel. The statement by the motel owner was filed with the Arbitration Panel along with a request for rehearing. After reviewing the document the panel denied rehearing.

During the course of the court litigation the parties took depositions from nine witnesses including the motel clerk. The clerk asserted in his deposition that he was pocketing the money himself and was making false entries on the registration cards. Although this deposition was taken from the clerk months after the litigation was commenced he was still employed by the motel.

The *owner* of the motel admitted that when two drivers stay in one room, they both sign the same registration card and each

receive a separate receipt. (R 446) For example, on 5-24-67 the petitioners Hines and Albin stayed in a room together. The registration card shows a payment of $12.48 and *each* turned a receipt in to Anchor and collected $8.32. (R 423)

The petitioners asserted their innocence, but the physical facts and a close reading of the exact statement made by the motel owner as well as the clerk led the joint arbitration panel to an opposite conclusion. The trial court accepted the decision of the Joint Arbitration Panel as a complete disposition of the petitioner's case. The trial court had all the evidence which would be produced at trial due to the extensive discovery which had been conducted. However, the trial court could not find even a "threshold issue of bad faith." (App. Appendix p. A. 5).

The Court of Appeals sustained the dismissal of the case against the employer and against the International Union. However, the Court of Appeals sent the case back for trial against the Local Union because of the *alleged* political hostility inside the Local Union to these petitioners. No petition for certiorari was filed by the Local Union at this stage of the proceedings since there has been no final judgment entered against the Local.

ARGUMENT

The decision of the Court of Appeals does not conflict with the decisions of this Court. On the contrary, both decisions below accepted the arbitration awards of the Joint Arbitration Panel and are consistent with the opinions of this court in *Humphrey v. Moore*, 375 US 342; *General Drivers Local 89 v. Riss & Co.*, 372 US 517.

In addition, there is no conflict in the Circuit Courts of Appeal on the interpretation and application of the decision of this Court in *Vaca v. Sipes*, 386 US 171. In those cases where the employees assert that the arbitration process did not result in a fair handling of their grievance, the Courts of Appeal have been reviewing these claims, *and the facts on which they are based*, against the fair representation standard established by this Court.

To *prove* a breach of the duty of fair representation is much more difficult than to *allege* it and this court has expressed itself to the effect that in these cases "there must be substantial evidence of fraud, deceitful actions or dishonest conduct." *Amalgamated Association v. Lockridge*, 403 US 274, 279.

It is clear from the petition for certiorari that no claim is made that the International Union, through its officers or agents, engaged in any conduct whatever against the petitioners, independent of the conduct claimed to have been engaged in by the Local Union. It is asserted by Petitioners that liability of the International Union is "vicarious".

The law has long recognized the International Unions as separate legal entities. In the case of *International Bro. of Electrical Workers (Franklin Elec. Constr. Co.)*, 121 NLRB 143 at 145-146, 42 LRRM 1301 at 1303 (July 24, 1958), the NLRB summarized the established case law on this point and said:

> "The overwhelming weight of judicial authority including the Supreme Court of the United States, is that a local union is a legal entity apart from its international and that it is not a mere branch or arm of the latter. That too has been the position of the Board." [citing cases]

Petitioners' reliance on *IBT v. United States*, 275 F.2d 610 and *Great Coastal Express, Inc. v. IBT*, 350 F. Supp. 1377 is entirely misplaced. In *IBT v. U.S.*, a Local Union in trusteeship, and being operated directly by the International Union, levied an illegal secondary boycott on freight handled by a non-union trucking company. The court held that this type of activity could not be engaged in by a local union without the International's specific approval. In such circumstances, the Court held, the assertion that the Local officer was acting for an autonomous and independent local and not for the International "cannot be squared with realism", 275 F.2d at p. 614.

Whatever independent legal significance the special facts in *IBT v. US*, supra, may or may not have, they differ substantially from the facts presented in the case at bar. Here the Local Union was engaged in the processing of grievances filed by discharged employees pursuant to a collective bargaining agreement. The agreement contains a specific procedure for the processing of these grievances and this procedure was followed by the local union. At no time was any officer or agent dispatched by the International Union to assist in the processing of these grievances.

The physical facts of industrial relations in the United States today would lend no credence whatever to an assertion that an International Union becomes "vicariously" liable for torts committed by an affiliated Local Union which occur while processing grievances for its members. Unlike activities which may occur during prolonged labor disputes where the record may show direct involvement on the part of the International Union, the

present case shows only that a local grievance was processed by local union officers pursuant to the procedures established by a collective bargaining agreement with no separate or independent involvement by the International Union.

In these circumstances there is no basis for imputing any liability to the International Union.

Respectfully submitted

DAVID LEO UELMEN
GOLDBERG, PREVIANT & UELMEN
211 West Wisconsin Avenue
Milwaukee, Wisconsin 53203

KNEE, SNYDER & PARKS
11 West Monument Building
Dayton, Ohio 45402

GREEN, SCHIAVONI, MURPHY & HAYNES
602 Stambaugh Building
Youngstown, Ohio 44503

Attorneys for Respondent Unions

Supreme Court U. S.
FILED
MAR 20 1975
MICHAEL RODAK JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1025

BURTICE A. HINES, ET AL.

Petitioners

v.

ANCHOR MOTOR FREIGHT, INC., ET AL.

Respondents

BRIEF OF ANCHOR MOTOR FREIGHT, INC. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

BERNARD S. GOLDFARB, ESQ.
1825 The Illuminating Bldg.
Cleveland, Ohio 44113

Attorney for Respondent
Anchor Motor Freight, Inc.

OF COUNSEL:
GOLDFARB & REZNICK
1825 The Illuminating
Building
Cleveland, Ohio 44113

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IN THE
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OCTOBER TERM, 1974

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Petitioners

v.

ANCHOR MOTOR FREIGHT, INC.,
ET AL.

Respondents

BRIEF OF ANCHOR MOTOR FREIGHT, INC. IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The Respondent, Anchor Motor Freight, Inc., opposes the Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit filed by the petitioners.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 506 F.2d 1153 (6th Cir. 1974). The opinion of the District Court was unofficially reported at 72 LC ¶13,987 (N.D. Ohio, 1973).

STATEMENT OF JURISDICTION

Respondent does not question the jurisdiction as set forth in the Petition.

STATEMENT OF FACTS AND THE CASE

Each of the petitioners was formerly employed by Respondent Anchor Motor Freight as a truck driver. In early June, 1967, Anchor discovered that while the petitioners were on overnight trips away from the terminal they were staying in a motel in Batavia, New York and sleeping two and three drivers to a room in order to save expenses, but were submitting receipts for single rooms to

Anchor for reimbursement (R. 314-16). Anchor investigated this matter extensively. The company talked to Anthony Pagano, desk clerk at the motel, who gave the motel's registration cards to Anchor. The cards indicated that the amount which the motel actually collected from the petitioners was less than the amount on the receipts that the petitioners had submitted to Anchor. Pagano gave Anchor an affidavit to that effect. Joseph Repicci, owner of the motel, verified in a sworn statement that the information given by Pagano was correct (R. 317-18, 334,337).

On the basis of the motel registration cards which Anchor had obtained from Pagano, the motel receipts which the drivers had submitted to Anchor for reimbursement of expenses, the Anchor form entitled Summary of Driver Expenses which each driver signed when he presented the

aforementioned motel receipts to the company for reimbursement, the daily logs kept by each driver, plus the sworn statements of Pagano and Repicci confirming that the amounts which the petitioners had paid the motel were less than the amounts stated on the receipts which they presented to Anchor for reimbursement, Anchor determined to discharge the petitioners for dishonesty.

On the date of the discharge, June 5, 1967, a meeting was held at the Anchor terminal between Anchor officials and union officials concerning the discharges (R271-73, 317-18). This was the first step in the contractual grievance procedure. At that meeting the union officials presented the petitioners' defense, i.e., that they were innocent of any wrongdoing, and that in fact the motel clerk was dishonest. This defense was repeated at the hearings before the contractually

established Joint Arbitration Committee in Detroit (R. 345). The committee voted to sustain the discharges. A petition for rehearing was presented to the committee, on the basis of what the petitioners characterized as new evidence in support of their position that Pagano was the person guilty of dishonesty. At that time the union presented the statement of Repicci that his prior statements were based on the records and the information supplied by Pagano and that he had no personal knowledge of the events in question. The committee ruled that insufficient new evidence had been presented, and that the argument that the motel clerk was the culpable party had been presented previously. The petitioners were present and were heard at both hearings (R. 81, 220-23, 346). At the rehearing, the petitioners were represented by both the union and the

attorney for the petitioners who obtained the Repicci statement, which was not inconsistent with any of the first statements. When the committee denied rehearing, on October 26, 1967, the contractual grievance procedures had been fully exhausted and the discharges of the petitioners had been sustained.

There was no evidence to indicate that the discharges had been anything other than for just cause. There had been no allegation of any misconduct by Anchor. The discharges are valid and final.

There is also no dispute that in a deposition taken in 1971 Pagano changed his version of the story. At that time Pagano alleged that it was he who was dishonest, rather than the petitioners. However, the question of Pagano's veracity, as opposed to the veracity of

the petitioners, was in issue throughout the grievance machinery proceedings.

The petitioners also alleged but did not prove that Anchor and the Local Union in some way conspired against the petitioners. Both the District Court and the Court of Appeals held that there was insufficient evidence to substantiate this claim. This is a factual determination.

ARGUMENT

The Decision Of The Sixth Circuit Was Not In Conflict With Either Prior Decisions Of This Court Or The Decisions Of Other Circuits.

Petitioners have alleged that the decision of the Sixth Circuit affirming the summary judgment in favor of Respondent Anchor Motor Freight in this matter is in conflict with prior decisions of this Court and decisions of the other circuits.

It is respectfully submitted that there is no such conflict.

The leading case on the subject of unfair representation and wrongful discharge actions is Vaca v. Sipes, 386 U.S. 171, 17 L.Ed.2d 842, 87 S.Ct. 903 (1967). Vaca was a suit against a union alleging unfair representation. The employer was not a party to that suit and the court decided the case on the assumption that the plaintiff had been wrongfully discharged, as the court below had decided (386 U.S. at 193). In Vaca the Supreme Court discussed at great length the union's duty of fair representation and the elements which a plaintiff must prove in order to make out a case against his union for breach of this statutory duty. The Court held that in order for a plaintiff to prevail he must establish that the union's conduct was "arbitrary, discriminatory, or in bad faith." 386 U.S. at 190. These

are the elements of a separate cause of action against a union.

Throughout the Vaca decision, the Court recognized that a suit against an employer for wrongful discharge and a suit against a union for unfair representation are essentially two separate causes of action, although they are closely related. The Court held that "it is now well established that...the Union had a statutory duty fairly to represent all of those employees..." (Id. at 177). However, "the question of whether a union has breached its duty of fair representation will in many cases be a critical issue in a suit under L.M.R.A. §301 charging an employer with a breach of contract." (Id. at 183). The Court stated that "if an employee is discharged without cause, either the union or the employee may sue the employer under L.M.R.A. §301." (Id. at

183). The court recognized that an employer has an additional defense in a breach of contract action if the plaintiff fails to exhaust his contractual remedies, but stated that this defense will not be available if the employee has proved that his union breached its duty of fair representation. The Court held that even if it is necessary for an employee to prove that his union breached its duty of fair representation in order to prevail, "the employee's suit against the employer, however, remains a §301 suit...." (Id. at 186). "And, insofar as adjudication of the union's breach of duty is concerned, the result should be no different if the employee, as Owens did here, sues the employer and the union in separate action." (Id. at 187). From the foregoing, it is clear that, although closely related, the actions against the union and the employer

in this type of case are separate and distinct causes of action. Neither party is indispensable in the action against the other. Harris v. Chemical Leaman Tank Lines, Inc., 437 F.2d 167,170 (5th Cir. 1971) and Serra v. Pepsi-Cola, 248 F.Supp. 684,688 (D.C. Ill. 1965).

In the instant case the petitioners have alleged that the decision of the Sixth Circuit, the effect of which is to allow the petitioners to go to trial on their breach of duty allegations against the union, but which also affirmed the district court's granting of the employer's motion for summary judgment on the charge of wrongful discharge, is in conflict with Vaca and subsequent decisions of the other circuits which relied on Vaca. This position of the petitioners ignores the substantial and basic distinction between the instant case and the cases cited.

In the instant case, all of the evidence indicates that the company had just cause for discharge. Unlike the cases cited by the petitioners and unlike Vaca v. Sipes, this is not a case involving a wrongful discharge, as it is inconceivable that an employer could be held responsible for allegedly "wrongful" conduct when there was not a scintilla of evidence to indicate that the company's conduct was not absolutely substantiated and warranted by the facts. This was recognized by the Sixth Circuit below when it outlined in a footnote (506 F.2d at 1158) that the "facts" upon which the plaintiffs relied were not sufficient to substantiate their claims against the company. The instant case is one in which there was no wrongful discharge, and the District Court and Court of Appeals recognized that the plaintiffs had not submitted evidence to substantiate

their claim against the company. However, in reversing the summary judgment against the union, the Court of Appeals felt that on the separate cause of action against the local union for an alleged breach of its duty of fair representation, there was sufficient evidence submitted to require that that case be heard. The decision of the Sixth Circuit recognized what this court had expressly stated in Vaca v. Sipes, i.e., that the actions against the union and the employer are separate causes of action, and, although closely related, the elements of the claims against the employer and the union are different, that the company is not an indispensable party in the action against the union, and that the cases can be decided separately and differently.

The petitioners have attempted to read into the decision of the Sixth Circuit an "unreasoned, unexplained

conflict among the circuits." (Petitioners' Brief, page 15). Nowhere in its decision did the Sixth Circuit repudiate, contradict, or otherwise conflict with this Court's decision in Vaca v. Sipes or with the decisions of other circuits following Vaca v. Sipes. All of the cases cited by the petitioners in their brief were situations in which there was no question but that the employer's discharge was wrongful. The only facts before the court were facts concerning the alleged unfair representation. In the cases cited by the petitioners in the instant case, and in the instant case itself, the courts have consistently held that where there has been proof of unfair representation the plaintiffs are entitled to prove wrongful discharge. In the instant case, however, the facts concerning the alleged wrongful discharge were also before the

court, and these facts are not disputed. This case is factually different from those cited by the petitioners for that reason. However, the legal issues and the decisions of the courts on these issues have been consistent. The only difference in the instant case from the cases cited by the petitioners is a difference of fact. In this case there is no legal proposition for the United States Supreme Court to consider, and there is no discrepancy of interpretation of the circuit courts for this Court to resolve. The Sixth Circuit did not vary from this Court's decision in Vaca, and therefore the petitioners' claim that the court must resolve this "conflict" is without merit.

In support of a Petition For Certiorari it is not sufficient for the petitioners to merely allege a vague and undefined conflict among the circuits.

Rather, before this Court should exercise its discretion to grant a Petition For Certiorari, the conflict must be substantial and obvious, which is not the case here.

> Certiorari is granted only 'in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeals.' National Labor Relations Board v. Pittsburg S.S. Co., 340 U.S. 498, 71 S.Ct. 453 (1951).

In the instant case there is no "real and embarrassing conflict of opinion and authority." In fact, there is no conflict whatsoever. Therefore, the Petition should be denied.

The petitioners have also alleged that the "integrity of industrial grievance procedure" requires that the Court review the decision below. It is submitted that deference to the integrity of contractual

grievance procedures requires that this Court decline to grant the instant petition for certiorari. In this case, Respondent Anchor Motor Freight cooperated in the implementation of the grievance procedure for these petitioners. Anchor met with the union officials concerning the discharge at the local level. Anchor participated in the Joint Arbitration Committee hearings in Detroit on these grievances. Anchor again participated in the submission of the case to the Joint Arbitration Committee on a petition for a rehearing. These are the contractually agreed upon procedures. Anchor followed them in letter and spirit. This company, by its conduct, affirmed its belief in these grievance procedures as a "substitute for industrial strife." And, upon the completion and exhaustion of these grievance procedures, this company has every right to rely upon the decision rendered

through that procedure. It would be an affront to those procedures and would constitute a great weakening of the entire system of resolving disputes by the procedures agreed to during collective bargaining if this Court should allow the petitioners to use unsubstantiated and contradictory information which was obtained many months after the conclusion of the agreed upon procedures to reopen a case which has been contractually concluded. There would be no finality. Rather, a perpetual cloud would hang over each and every arbitral award. No decision would ever be final! In the instant case, Anchor did nothing wrong. It relied upon the integrity of its contractual dispute resolution machinery. If this Court grants the instant petition and allows the petitioners to reopen a matter which has been closed for many years, in the absence of any wrongdoing

by the employer, then the intregity of the contractual grievance procedure would be seriously undermined. On the other hand, a decision which would allow an innocent employer to rely on the negotiated procedures could hardly be described as a way of weakening the intregrity of the system.

CONCLUSION

For the reasons set forth herein, the Petition For A Writ Of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18th day of March, 1975, three copies of the foregoing Petition For A Writ Of Certiorari were sent by certified mail, return receipt requested, to the following attorneys for each other party separately represented, pursuant to Supreme Court Rule 33(1): Niki Z. Schwartz, Esquire, Attorney for Petitioners, 1100 Investment Plaza, Cleveland, Ohio 44114; David L. Uelman, Esquire, 211 West Wisconsin Avenue, Milwaukee, Wisconsin 53203; Knee, Snyder & Parks, 11 West Monument Building, Dayton, Ohio 45402; and Eugene Green, Esquire, 602 Stambaugh Building, Youngstown, Ohio 44503; attorneys for Respondent Unions.

Bernard S. Goldfarb

Supreme Court, U. S.
FILED
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Supreme Court of the United States

October Term, 1974

No. 74-1025

BURTICE A. HINES, *et al.*,
Petitioners,

vs.

ANCHOR MOTOR FREIGHT, INC., *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Supreme Court of the United States

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 506 F.2d 1153 and is printed in the appendix to the Petition for Certiorari, at p. A9. The opinion of the District Court is unofficially reported as *Hines v. Local Union No. 377, et al.*, 72 LC ¶13,987 (N.D. Ohio 1973) and is printed in the appendix to the Petition, at p. A1.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on November 22, 1974. The Petition for Certiorari was filed on February 15, 1975 and granted on April 21, 1975. Jurisdiction to review this judgment by writ of certiorari is conferred on this Court by Title 28, United States Code, Section 1257(3).

STATUTORY PROVISION INVOLVED

Labor-Management Relations Act §301 (29 U.S.C. §185):

Suits by and against labor organizations—Venue, amount and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter, and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the

organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling. June 23, 1947, c. 120, Title III, §301 61 Stat. 156.

QUESTION PRESENTED

Whether petitioners' claim under LMRA §301 for wrongful discharge is barred by the decision of a joint grievance committee upholding their discharge, notwithstanding that their union breached its duty of fair representation in processing their grievance so as to deprive them and the grievance committee of overwhelming evidence of their innocence of the alleged dishonesty for which they were discharged?

STATEMENT OF THE CASE

Petitioners, eight truck drivers discharged from their jobs by the respondent Anchor Motor Freight Company, seek to have this Court reverse a divided decision of the Court of Appeals for the Sixth Circuit entered on November 22, 1974, affirming a summary judgment granted by the District Court in favor of respondent Anchor Motor Freight in petitioners' action for wrongful discharge and breach of the duty of fair representation. (The Court of Appeals reversed the District Court's grant of summary judgment to Teamsters Local Union No. 377 and no cross petition has been filed by the Union.)

The relevant facts are set forth below as they pertain to wrongful discharge, unfair representation and the proceedings below respectively.

A. Wrongful Discharge

On June 5, 1967, the eight petitioners and three others were discharged from their employment as truck drivers for Anchor Motor Freight for alleged dishonesty (R. 119-120).[1] Petitioners contend that by this discharge, Anchor

[1] "R" refers to the page number of items reprinted in the Appendix. The opinions below which are reprinted in the Appendix to the Petition will be cited as "A".

Motor Freight breached its collective bargaining agreement with petitioners' union, Local 377 of the International Brotherhood of Teamsters, by which Anchor agreed that:

> "The Employer shall not discharge or suspend any employees without just cause. . . ." (Art. 32, National Master Automobile Transporters Agreement, R. 170-171).

The alleged dishonesty consisted of claims that petitioners had submitted motel receipts to the Company for reimbursement for higher amounts than they had actually paid (R. 121). The evidence upon which Anchor relied (R. 122-123, 129) which it submitted to subsequent grievance proceedings (R. 137-138) and to the District Court consisted of receipts showing amounts paid in excess of amounts shown paid on the comparable motel registration cards (R. 173-179), accompanying logs and expense summaries, the notarized statement of motel clerk Anthony Pagano swearing to the accuracy of the amounts shown on the registration cards (R. 180-186) and the notarized statements of motel owner Joseph Repicci swearing to the accuracy of the amounts shown on the registration cards and to the fact that inflated receipts were given to petitioners (R. 188-189).

Petitioners' evidence in the District Court on this issue consisted of (1) the fact that they have at all times denied paying less than was shown on the receipts they submitted (R. 106, 87, 75, 47); (2) owner Repicci's deposition testimony that he personally handled none of the transactions in question (R. 65), that his brother-in-law Pagano had handled them, having authority to sign his name (R. 65), that he (Repicci) had no personal knowledge of the transactions (R. 66) and that his notarized statements (R. 188-189) had been based solely on comparison of the receipts with the registration cards and his brother-in-law's word

(R. 66-67); and (3) *Clerk Pagano's Deposition Testimony that he handled all of the transactions in question (R. 51-53), that the amounts shown on the receipts accurately reflect what petitioners paid and that the discrepancy between the receipts and the registration cards is attributable to his having recorded a lesser amount on the registration card and pocketed the difference (R. 53-54), that he committed perjury when he swore to the notarized statement obtained by Anchor (R. 55), and that, of his own volition, he apprised Anchor officials of these facts in 1968 (R. 55-59).*

Thus, there is no evidence of petitioners' dishonesty that survives Pagano's admission of culpability, and the evidence overwhelmingly establishes petitioners' innocence, and, therefore, their discharge is "without just cause" in violation of the collective bargaining agreement.

B. Unfair Representation

1. Local 377 processed petitioners' grievance in an "arbitrary" and "perfunctory" fashion.

On the day petitioners were discharged, June 5, 1967, grievance proceedings were had at the local level, at which Anchor's evidence of petitioners' alleged dishonesty (R. 173-189) was presented to Local 377 Business Agent, Abe Schwartz[2] (R. 122-123, 104). The informal meeting between company and union officials culminated in an agreement that the men would be reinstated pending submission of the dispute to the Joint Arbitration Committee in Detroit (R. 133) which proceedings were subsequently scheduled for July 26, 1967 (R. 190).

In the interim, petitioners advised their union repre-

[2] One of two business agents assigned by Local Union 377 to "service" the employees at Anchor's Lordstown terminal. The other was John Angelo (R. 101).

sentatives, Angelo and Schwartz, of their innocence (R. 87, 102), solicited their assistance and advice in preparing for the hearing in Detroit (R. 46, 40-41, 73-74, 79-80), and specifically suggested investigating the motel, contacting the motel owner, and obtaining or consulting a lawyer (R. 40-41, 49, 73-74). *Notwithstanding the substantial evidence presented by the Company at the local meeting, Angelo and Schwartz advised petitioners that they had nothing to worry about (R. 46, 79-80), that there was no way the Company could fire them and that there was no need for them to investigate or do anything (R. 40-41, 73-74). Plaintiffs were specifically advised to forget it (R. 49), to do nothing (R. 49), and to let Angelo take care of it (R. 46, 79).*

Petitioners heeded Angelo and Schwartz as "advice of knowing what was going on" (R. 80, 40). Prior to going to Detroit for the hearing, Angelo and Schwartz conducted no investigation, gathered no evidence, gave petitioners no advice of their procedural rights and engaged in no preparation other than telling the men to be there and state their case (R. 39, 49, 87-88, 104-105, 106-108).

At the hearing in Detroit, Angelo and Schwartz presented not a shred of evidence (R. 30-31, 47, 139-140), responding to the Company's evidence (R. 173-189) with nothing more than raw assertion of the petitioners' innocence and wholly unsupported charges against the motel (R. 135-136, 139-140). Each of the petitioners present was given the opportunity to assert his innocence as well (R. 137).

After the panel upheld the discharge,[3] petitioners privately retained an attorney (R. 48, 82) who went to the motel and obtained a sworn statement from owner Repicci (R. 82-83) indicating that he had no personal knowledge

[3] An unsurprising result in light of the evidence presented. Even union representatives on the panel voted against petitioners (R. 142).

of the transactions in question, that his clerk had handled them, and that the discrepancy between the receipts and registration cards could just as likely be attributable to the clerk recording less than was actually paid (R. 199-209).

Armed with this statement, some of the petitioners returned to Detroit in October (accompanied by their attorney, Angelo, and Schwartz) to seek a rehearing from the panel based on the new evidence (R. 48). However, the requests for rehearing were unanimously denied on the ground that there was no new evidence justifying a reopening (R. 210-212) and the motel owner's statement was never considered by the grievance committee on the merits of the discharge.

2. *Local 377 officials were motivated by ill will and animosity toward petitioners generated by labor relations conflicts occurring prior to the discharge.*

When Anchor Motor Freight opened its Lordstown Terminal in 1966, the Company was compelled by contract to rehire laid-off drivers from Norwood, Ohio, who came to Lordstown with seniority and entitlement to higher fringe benefits (R. 110-112). The Norwood drivers were unhappy with the less favorable dispatch system and work rules at Lordstown (R. 77-78, 116-117), pursuant to a local rider negotiated by Anchor with Teamsters Local 964 prior to the arrival of any employees and only a week or two before Local 377 assumed jurisdiction as collective bargaining agent (R. 112-114, 115). Complaints about the local rider and about the lack of opportunity to vote on its ratification produced only claims of being helplessly bound by it from Local 377 (R. 84-86).

Further, the drivers complained about a general failure of representation from Local 377 (R. 50), including the failure to provide a steward and committee from the

opening of the terminal in April 1966 to a stormy union meeting in August of that year when John Angelo appointed a steward over the vehement objections of the men, who had elected their own at Norwood and wanted to do so at Lordstown (R. 33-34). Only under threat of walkout did Angelo permit the men to elect a committee (R. 79). During the course of the meeting, Angelo denounced the Norwood drivers as "hillbillies" and declared that they weren't going to take over his union (R. 152).

The drivers' discontent with the local rider working conditions and with the representation provided by Local 377 continued into February 1967, when they took matters into their own hands and went out on a wildcat strike (R. 34-36, 50). Among the leaders of the wildcat strike were petitioners Worley and Croft (R. 156-161).

During this period of driver discontent with working conditions at Lordstown and even greater unhappiness with the quality and vigor of representation being provided by Angelo and Schwartz, the two business agents for Local 377 were receiving favors from the Company. Terminal Manager Eugene Babiasz loaned a Company car to John Angelo (R. 91-97) and arranged a personal automobile purchase bargain for him in Michigan (R. 97-98). Jobs were given to at least two of Abe Schwartz' relatives (A6). Meanwhile the Company was weeding out its Norwood drivers, twenty-five of the fifty-seven who had transferred to Lordstown having been terminated or quit by the end of 1967, including five of the eleven discharged for the alleged dishonesty in issue in the instant case (R. 164-168).[4]

C. Proceedings Below

This action by eight of the eleven discharged drivers was filed on June 30, 1969 in the Northern District of Ohio,

[4] The Company had previously, but unsuccessfully, sought to discharge petitioner Worley (R. 47-48).

Eastern Division (R. 4). On September 25, 1973, under dubious procedural circumstances,[5] the District Court granted summary judgment to all respondents on the ground that the decision of the joint grievance committee upholding the discharges was final and binding absent a breach of the duty of fair representation by the union of which there was insufficient evidence to warrant a trial (A1-8).

On appeal to the Sixth Circuit, the Court of Appeals unanimously reversed the judgment in favor of Local Union No. 377, concluding that there was indeed sufficient evidence of a breach of the duty of fair representation to warrant a trial, but nevertheless affirmed by divided vote the summary judgment in favor of Anchor Motor Freight, holding that the joint grievance committee's decision was

[5] On June 1, 1972, Anchor Motor Freight filed a motion for summary judgment (R. 16) based on the identical evidence and law subsequently asserted in support of its second and successful motion filed a year later. (Both union respondents expressly opted not to file summary judgment motions within the deadlines established and extended by the District Court.) On October 31, 1972 district Judge Leroy Contie overruled Anchor's first motion for summary judgment finding "substantial issues as to material facts" (R. 17).

Although Anchor's subsequent motion for continuance until after January 1, 1974 was overruled (R. 18), the case was never called for trial, notwithstanding that it was set for trial six times between September 11, 1972 and September 24, 1973.

One year after its first motion, Anchor filed another motion for summary judgment (R. 19) based on the identical evidence and legal theories which it had urged in support of its previous motion (R. 16) which had been overruled by the Court (R. 17). This time the union respondents filed a motion for summary judgment as well (R. 20) based, however, on the same evidence and legal contentions (plus a contention by the respondent International Brotherhood of Teamsters that even assuming a wrongful discharge, and breach of the duty of fair representation by Local 377, the International was not liable therefor). The district judge, brushing aside petitioners' objections to the refiling of the identical motion previously overruled (R. 22) and to the filing by the union respondents an entire year out of rule, reversed himself and granted summary judgment to all respondents (A1-8).

final and binding in favor of the employer notwithstanding that the union breached its duty of fair representation in processing the grievance (A15-16). The Court affirmed the judgment in favor of the International Union, implicitly holding that the International could not be vicariously liable for the torts of its Local (A15), an issue which the District Court had found it unnecessary to resolve.

On April 21, 1975 this Court granted petitioners' Petition for Certiorari to review the judgment of the Sixth Circuit affirming the summary judgment awarded to their employer Anchor Motor Freight, Inc., by the District Court, to determine the question presented thereby, to wit:

> Whether petitioners' claim under LMRA §301 for wrongful discharge is barred by the decision of a joint grievance committee upholding their discharge, notwithstanding that their union breached its duty of fair representation in processing their grievance so as to deprive them and the grievance committee of overwhelming evidence of their innocence of the alleged dishonesty for which they were discharged?

SUMMARY OF ARGUMENT

I.

The holding of the Sixth Circuit below, that petitioners' §301 action for wrongful discharge is barred by a joint grievance committee proceeding in which they were deprived of fair representation, flies in the face of the spirit of this Court's decision in *Vaca v. Sipes,* 386 U.S. 171 (1967) and of the overwhelming weight of authority in the lower courts since *Vaca*.

The Court declared in *Vaca* that it would be "a great injustice" to leave an employee remediless where "the employer has committed a wrongful discharge in breach of [the collective bargaining] agreement, a breach which

could be remedied through the grievance process to the employee-plaintiff's benefit were it not for the union's breach of its statutory duty of fair representation to the employee." 386 U.S. at 185-186. Although *Vaca* involved the refusal of a union to process the plaintiff's grievance to conclusion, both the letter and the logic of the Court's opinion apply equally to grievances processed to conclusion in breach of the duty of fair representation, as the Court further declared, "that a union may not arbitrarily ignore a meritorious grievance *or process it in perfunctory fashion. . . .*" *Id.* at 191 (emphasis added).

Every circuit court of appeals that has considered the issue (except for the Sixth Circuit in the instant case) has concluded that a grievance proceeding in which an employee has been deprived of fair representation cannot bar his §301 action against the employer. *Steinman v. Spector Freight System, Inc.*, 441 F.2d 599 (2d Cir. 1971); *Butler v. Local Union 823, International Brotherhood of Teamsters*, ___ F.2d ___, 76 LC ¶10,739 (8th Cir. 3/18/75); *Margetta v. Pam Pam Corporation*, 501 F.2d 179 (9th Cir. 1974); *Bieski v. Eastern Automobile Forwarding Co.*, 396 F.2d 32, 38 (3d Cir. 1968) (dicta); *Lusk v. Eastern Products Corp.*, 427 F.2d 705 (4th Cir. 1970) (dicta); *Harris v. Chemical Leaman Tank Lines, Inc.*, 437 F.2d 167, 171 (5th Cir. 1971) (dicta); *Szczesny v. Montgomery Ward & Co.*, 83 L.R.R.M. 2041 (7th Cir. 1973) (dicta).

II.

It is fundamentally unfair to bind employees to the results of grievance proceedings in which their grievances are not fairly presented. Grievances which are not fairly presented cannot be fairly considered. Thus, in the instant case, the union's breach of fair representation deprived both petitioners and the grievance committee of

overwhelming evidence of innocence thereby undermining the reliability of the fact finding process.

Relief against the union alone is insufficient to make petitioners whole, since reinstatement cannot be awarded against the union. Nor may damages for loss of employment be recovered from the union except to the extent that it "added to the difficulty and expense of collecting from the employer," *Czosek v. O'Mara*, 397 U.S. 25, 29 (1970), which damages are arguably nothing since nothing can be collected from the employer. Thus, unless this Court reverses the summary judgment affirmed in favor of their employer, Anchor Motor Freight, petitioners will have suffered the "great injustice" of two wrongs without a remedy.

III.

The application of the principles articulated in *Vaca v. Sipes, supra*, to grievances unfairly processed to conclusion is required by national labor policy. Although that policy since the 1930's has sought to promote industrial peace and justice by enhancing the collective power of employees through labor unions in order to balance the power of employers and facilitate a system of "industrial self-government," *United Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U.S. 574, 581 (1960), both Congress and this Court have recognized the necessity of providing some measure of judicial protection for individual employees from abuses of the awesome power vested by law in the contracting parties. Accordingly unions have been held to a duty of fair representation, *Steele v. Louisville L. & N. R. Co.*, 323 U.S. 192 (1944); *Vaca v. Sipes, supra*, and individual employees have been accorded the right to file suit for breaches of collective bargaining agreements pursuant to §301 of the Labor-Management Rela-

tions Act, 29 U.S.C. §185, *Smith v. Evening News Ass'n,* 371 U.S. 195 (1962).

To protect and preserve the fundamental principle of this Court's decisions in the "Steelworkers Trilogy" of reliance upon industrial grievance procedures as "substitute|s| for industrial strife," 363 U.S. at 578, it is imperative that unfairly represented employees be permitted to pursue their §301 action against their employer.

Although "rigged," "collusive," "agreed," or "horse-traded cases" are widely reported, collusion is virtually impossible to prove. Thus, the breach of contract/duty of fair representation law suit represents the only significant check against those breaches of the integrity of contractual grievance procedures detrimental to individual employees "stripped of traditional forms of redress by the provisions of federal labor law." *Vaca v. Sipes, supra,* at 182. To immunize industrial grievance procedures from even this minimal form of review is to invite abuses of integrity such as will undermine the ability of such procedures to function as "substitutes for industrial strife."

IV.

Even if this Court is not inclined at this time to adopt the per se rule suggested by *Vaca v. Sipes, i.e.* that proof of unfair representation in the processing of his grievance entitles an employee to litigate his §301 claim in all cases, a balance of the relevant labor policy interests involved in the instant case dictates such a rule for cases of this type.

Petitioners' discharge for dishonesty inflicted upon them the maximum harm that can befall a worker. Discharge grievances involve maximum risk of collusion and unfair representation. Judicial review of discharge grievances poses minimal risk to the "system of industrial self-

government" favored by "The Trilogy" since they tend to present only questions of fact and seldom involve or require contract interpretation, modification, or renegotiation.

The joint grievance committee procedure (comprising an equal number of employer and union representatives without any neutrals) which upheld petitioners' discharge, is inherently more susceptible to corruption than traditional arbitration and thus the need for some residuum of meaningful judicial scrutiny of its results is optimal.

There is overwhelming evidence of petitioners' innocence of the dishonesty for which they were discharged, the benefit of which both they and the grievance committee were deprived by reason of the union's arbitrary and bad faith breach of its duty of fair representation.

ARGUMENT

I. THE DECISION BELOW FLIES IN THE FACE OF THE SPIRIT OF THIS COURT'S DECISION IN *VACA V. SIPES,* 386 U.S. 171 (1967), AND THE OVERWHELMING WEIGHT OF AUTHORITY IN THE LOWER COURTS.

The majority below affirmed the summary judgment in favor of the respondent Anchor Motor Freight on petitioners' claim for wrongful discharge, on the ground that the decision of a joint grievance committee upholding the discharge barred their §301 action. It did so in spite of its finding that there was sufficient evidence, to warrant a trial, that respondent Local Union No. 377 had breached its duty of fair representation to petitioners in handling their grievance.

The resultant holding, that a joint grievance committee proceeding in which petitioners were not fairly represented bars their §301 action against the employer, flies in the face of the spirit of this Court's decision in *Vaca v.*

Sipes, 386 U.S. 171 (1967), and of the overwhelming weight of authority in the lower courts since *Vaca*.

In arriving at its decision in *Vaca* that fair representation duty suits were not pre-empted by the jurisdiction of the National Labor Relations Board, this Court found it necessary to consider the issue "in the context of many [anticipated] §301 breach-of-contract actions." 386 U.S. at 187. The Court, recognizing that because contractual grievance procedures "have been devised and are often controlled by the union and the employer, they may well prove unsatisfactory or unworkable for the individual grievant," found it necessary "to determine under what circumstances the individual employee may obtain judicial review of his breach-of-contract claim despite his failure to secure relief through the contractual remedial procedures." 386 U.S. at 185.

The Court concluded that it would be a great injustice to leave an employee remediless where "the employer has committed a wrongful discharge in breach of [the collective bargaining] agreement, a breach which could be remedied through the grievance process to the employee-plaintiff's benefit were it not for the union's breach of its statutory duty of fair representation to the employee." 386 U.S. at 185-186. Mr. Justice White, speaking for the majority, explained:

> "We cannot believe that Congress, in conferring upon employers and unions the power to establish exclusive grievance procedures, intended to confer upon unions such unlimited discretion to deprive injured employees of all remedies for breach of contract. Nor do we think that Congress intended to shield employers from the natural consequences of their breaches of bargaining agreements by wrongful union conduct in the enforcement of such agreements. Cf. *Richardson v. Texas & N.O. R. Co.*, 242 F.2d 230, 235-236 (C. A. 5th Cir.).

> "For these reasons, we think the wrongfully discharged employee may bring an action against his employer in the face of a defense based upon the failure to exhaust contractual remedies, provided the employee can prove that the union as bargaining agent breached its duty of fair representation in its handling of the employee's grievance." 386 U.S. at 186.

Although it is true that the particular facts of *Vaca v. Sipes* involved the refusal of the union to process the plaintiff's grievance to conclusion, both the letter and the logic of the Court's opinion apply equally to breaches of the duty of fair representation committed by the union in the course of processing the grievance.[6] Thus, in brief explanation of the duty of fair representation as applied to grievances, the Court said:

> ". . . that a union may not arbitrarily ignore a meritorious grievance *or process it in perfunctory fashion*. . ." *Id.* at 191 (emphasis added).

Indeed, any other rule would facilitate the easy evasion of the *Vaca* principle by the simple device of perfunctorily processing the grievance, thereby according the employee the form, but not the substance, of grievance proceedings.[7]

Accordingly, each circuit court of appeals that has considered the issue (except for the Sixth Circuit in the

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[6] The applicability of the principles underlying *Vaca* to grievances processed to conclusion had been recognized by this Court three years earlier in *Humphrey v. Moore*, 375 U.S. 335 (1964), where the Court suggested that proof of the plaintiff-employees' claim of dishonest union conduct in breach of the duty of fair representation would permit them to maintain a §301 action for breach of the collective bargaining agreement against their employer to enjoin enforcement of an otherwise final decision of a joint grievance committee on a seniority grievance, *id* at 342-343. The judgment in plaintiff's favor was reversed, however, on the ground that they had failed to prove such a breach.

[7] This is exactly what petitioners claim happened in the instant case. See Section IV *infra* at pp. 33-35.

instant case) has concluded that a grievance proceeding in which an employee has been deprived of fair representation cannot bar his §301 action against the employer. The Second,[9] Eighth,[9] and Ninth[10] Circuits have expressly so held, while the Third,[11] Fourth,[12] Fifth,[13] and Seventh[14] Circuits have indicated their accord in dicta.[15]

II. IT IS GROSSLY UNJUST TO BIND AN EMPLOYEE TO THE RESULT OF A GRIEVANCE PROCEEDING IN WHICH HE IS NOT FAIRLY REPRESENTED.

A. A Grievance Proceeding Without a Fair Presentation of the Grievance Is a Sham.

The fundamental injustice of binding an employee to the result of a grievance proceeding in which he was not fairly represented has been cogently articulated by the

[9] *Steinman v. Spector Freight System, Inc.*, 441 F.2d 599 (2d Cir. 1971).

[9] *Butler v. Local Union 823, International Brotherhood of Teamsters*, ———F.2d———, 76 LC ¶10,739 (8th Cir. 3/18/75), *petition for cert. filed sub nom. Yellow Freight System, Inc. v. Butler*, 43 U.S.L.W. 3615 (5/14/75) (No. 74-1434).

[10] *Margetta v. Pam Pam Corporation*, 501 F.2d 179 (9th Cir. 1974); *Local 13, International Longshoremen's and Warehousemen's Union v. Pacific Maritime Association*, 441 F.2d 1061 (9th Cir. 1971).

[11] *Bieski v. Eastern Automobile Forwarding Co.*, 396 F.2d 32, 38 (3d Cir. 1968); *Rothlein v. Armour & Co.*, 391 F.2d 574, 579-580 (3d Cir. 1968).

[12] *Lusk v. Eastern Products Corp.*, 427 F.2d 705, 708 (4th Cir. 1970).

[13] *Harris v. Chemical Leaman Tank Lines, Inc.*, 437 F.2d 167, 171 (5th Cir. 1971).

[14] *Szczesny v. Montgomery Ward & Co.*, 83 L.R.R.M. 2041 (7th Cir. 1973).

[15] Similar, albeit nonunanimous, conclusions have been reached by the district courts. *See, Morton v. Anchor Motor Freight, Inc.*, ——— F. Supp.———, 76 L.C. ¶10,752 (S.D.N.Y. 3/11/75); *Holodnak v. Avco-Lycoming Division, Avco Corp.*, 381 F. Supp. 191, 199 (D. Conn. 1974), *aff'd in relevant part*, ———

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Second Circuit in rejecting such a decision by the district court in *Steinman v. Spector Freight System, Inc.* 441 F.2d 599, 603 (2d Cir. 1971):

> "We do not agree with [the district court's] analysis, since it places undue emphasis on the form of arbitration and ignores the realities of plaintiff's plight. He has been effectively denied a fair hearing on the merits of his claim in the arbitration process and has now been similarly denied one in the federal district court. We agree that under *Republic Steel* [*Corp. v. Maddox*, 379 U.S. 650 (1965)]—as well as under other decisions cited to us by Spector—plaintiff could not sue if he had lost in a fair arbitration. But that has not occurred and the case is therefore inapposite."[16]

This rationale for applying the reasoning of *Vaca* to grievances processed to conclusion without fair representation was most recently and succinctly restated in *Holodnak v. Avco-Lycoming Division, Avco Corp.*, 381 F. Supp. 191, 199 (D. Conn. 1974), *aff'd in relevant part* ... F.2d ..., 76 LC ¶10,676 (2d Cir. 2/18/75):

> "The reason is that the employee's grievance can hardly have been given due consideration by the arbitrator when it was not fairly presented by his representative union."

This reasoning is particularly apposite to the instant case in which petitioners were accorded the form without the substance of a grievance proceeding, the union's

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F.2d ———, 76 LC ¶10,676 (2d Cir. 2/18/75); *Chapman v. United Aircraft Corp.*, 329 F. Supp. 735 (E.D. Pa. 1971). *See also, Corso v. Local 153, U.A.W.*, 123 N.J. Super. 121, 301 A. 2d 773 (App. Div. 1973). *Contra: Allesandrini v. American Fed'n of Musicians*, 334 F. Supp. 1152 (S.D. N.Y. 1970); *Hill v. Aro Corp.*, 275 F. Supp. 482 (N.D Ohio 1967).

[16] The fact that on remand the district court held that the employer (not having been a party to the NLRB proceeding) was

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breach of fair representation[17] having undermined the reliability of the fact finding process by depriving both the petitioners and the tribunal of the benefit of the unequivocally exculpatory evidence of the motel clerk and owner.[18]

If, indeed, it would "be a great injustice" to leave a wrongfully discharged employee remediless where the discharge "could be remedied through the grievance process to the employee-plaintiff's benefit were it not for the union's breach of its statutory duty of fair representation," *Vaca v. Sipes, supra,* at 185-186, why would it be any less an injustice to leave such employee remediless where the union leads him to certain (and erroneous) defeat by breaching its duty of fair representation in the presentation of his grievance? The result is identical. To endow the latter with legal sanctity would be the ultimate exaltation of form over substance, as the Ninth Circuit recognized in *Margetta v. Pam Pam Corp.*, 501 F.2d 179 (9th Cir. 1974) when it declared:

> "To us, it makes little difference whether the union subverts the arbitration by refusing to proceed as in *Vaca* or follows the arbitration trail to the end, but in so doing subverts the arbitration process by failing to fairly represent the employee. In neither case, does the employee receive fair representation. The grievance procedure is nothing less than a 'sham' " *Id.* at 180.

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not bound by the NLRB finding of unfair representation and concluded (after de novo trial of the issue) that Steinman had been fairly represented, *Steinman v Spector Freight System, Inc.*, Civil No. 1968-341 (W.D. N.Y. Feb. 16, 1972), *aff'd* 476 F.2d 437 (2d Cir. 1973), in no way detracts from the holding of the Second Circuit at 441 F.2d 599 that a meritorious claim of unfair representation by the union entitles the plaintiff to litigate his wrongful discharge claim in a §301 action against his employer.

[17]See Statement of the Case at pp. 6-8 *supra*.

[18]See Statement of the Case at pp. 5-6 *supra*.

B. Relief Against The Union Alone Is Insufficient.

A second major reason for allowing employees such as petitioners, wrongfully discharged by their employer and unfairly represented by their union, to proceed against their employer in a §301 action is that relief against the union alone would not be sufficient to make them whole. As succinctly summarized by the Ninth Circuit in *Margetta v. Pam Pam, supra:*

> "The fundamental teaching of *Vaca* is that somewhere along the judicial trail, the employee is entitled to a fair hearing on her grievance and, if wrongfully discharged, a judgment for adequate compensation or other relief. To suggest that she may sue her union is no answer. Relief against the union would not restore her job with Pam Pam. As indicated in *Vaca,* in these circumstances, adequate relief may be obtained only by joining the union and the employer." 501 F.2d at 180-81.

The Ninth Circuit, of course, was referring to this Court's statement in *Vaca:*

> "Nor do we think that Congress intended to shield employers from the natural consequences of their breaches of bargaining agreements by wrongful union conduct in the enforcement of such agreements." Cf. *Richardson v. Texas & N. O. R. Co.*, 242 F.2d 230, 235, 236 (C.A. 5th Cir.).
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> * * * * *
>
> "The employee should have no difficulty recovering these damages from the employer, who cannot, as we have explained, hide behind the union's wrongful failure to act; in fact, the employer may be (and probably should be) joined as a defendant in the fair representation suit, as in *Humphrey v. Moore, supra.*" *Vaca v. Sipes,* 386 U.S. at 186, 197.

Obviously, in the instant case, petitioners can be awarded neither reinstatement nor damages for loss of em-

ployment against their employer, respondent Anchor Motor Freight, if the summary judgment in favor of Anchor is permitted to stand. Moreover, this Court's decision in *Czosek v. O'Mara*, 397 U.S. 25 (1970) precludes the recovery of damages for loss of employment from the union[19] except to the extent that it "added to the difficulty and expense of collecting from the employer," 397 U.S. at 29, which damages are arguably nothing since nothing can be collected from the employer.

The *Czosek* rule on the allocation of damages combined with the judgment of the Sixth Circuit in the instant case produces a result whereby petitioners are utterly without remedy even though they were wrongfully discharged (being wholly innocent of the dishonesty with which they were charged) and even though they were deprived of the opportunity to prove their innocence by reason of their union's arbitrary and bad faith processing of their grievance in breach of the duty of fair representation. Thus unless this Court reverses the judgment of the Sixth Circuit in favor of the employer, Anchor Motor Freight, petitioners will have suffered the "great injustice" of two wrongs without a remedy.

III. THE APPLICATION OF *VACA* PRINCIPLES TO GRIEVANCES UNFAIRLY PROCESSED TO CONCLUSION IS REQUIRED BY NATIONAL LABOR POLICY.

A. Both Congress and This Court Have Recognized the Necessity of Providing Judicial Protection for Individual Employees From Abuses of the Power Vested By Law in Management and Labor Under Our System of Collective Bargaining.

National labor policy, since the 1930's, has sought to

[19] It goes without saying that reinstatement cannot be ordered against the union alone, since such relief can only be conferred by the employer.

promote industrial peace and justice by enhancing the collective power of employees through labor unions in order to counter the power of employers thereby facilitating a system of collective bargaining designed to resolve labor disputes by agreement rather than strife.[20] This collective bargaining system necessarily "subordinates the interests of an individual employee to the collective interests of all employees in a bargaining unit." *Vaca v. Sipes*, 386 U.S. at 182.

In recent years innumerable observers of American labor relations have noted that this solution to the problems of the Thirties, balancing the power of big business with the power of big labor, has created some new problems, in that union power can and has been exercised with employer power against employees in disfavor.[21]

Indeed both Congress and this Court have perceived and responded to the phenomena of abuse of union power and of union-employer "agreement" prejudicial to their member-employees. Congressional investigations conducted in the late Fifties disclosed innumerable abuses, including extensive collusion between certain managements and unions,[22] culminating in the enactment of the Labor-

[20] These policies have been developed upon the foundation of the National Labor Relations Act, 49 Stat. 449 (1935), as amended by the Labor-Management Relations Act, 61 Stat. 136 (1947), 29 U.S.C. §151 et seq.

[21] *See e. g.* Azoff, *Joint Committees as an Alternative Form of Arbitration Under the NLRA*, 47 TUL. L. REV. 325, 336-38 (1973); Blumrosen, *The Worker and Three Phases of Unionism: Administrative and Judicial Control of the Worker-Union Relationship*, 61 MICH. L. REV. 1435, 1465-66, 1523-24 (1963); Simpson and Berwick, *Exhaustion of Grievance Procedures and the Individual Employee*, 51 TEX. L. REV. 1179 (1973); Summers, *Individual Rights in Collective Agreements and Arbitration*, 37 NYU L. REV. 362 (1962); Tobias, *A Plea for the Wrongfully Discharged Employee Abandoned by His Union*, 41 U. CIN. L. REV. 55, 58-68 (1972).

[22] See Report of Select Committee on Improper Activities in the Labor or Management Field (popularly known as the Mc-

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Management Reporting and Disclosure Act, 73 Stat. 519 (1959), 29 U.S.C. §401 et seq. During the course of floor debate on the LMRDA, one of the bill's co-sponsors, Senator Randolph, articulated a common concern, declaring:

> "... today we are faced, perhaps more than ever before, with a desire on the part of some of us to continue the dignity of the individual. On the other hand, we have bigness all about us—bigness in government, bigness in industry, bigness in labor. Bigness is a part of our American life. Yet I wish to see to it that the individual is not lost in the shuffle." Cong. Rec., 86th Cong. 1st Sess. Vol. 105, p. 6281 (April 20, 1959).

Congress had already manifested its concern that the individual not get "lost in the shuffle" with specific respect to the administration of collective bargaining agreements by conferring upon individual employees the right to take their grievances directly to their employer without the interference of their union, Section 9 (a) of the National Labor Relations Act, as amended, 29 U.S.C. §159(a), and sought to strengthen that right in the LMRDA by requiring unions to make available to their members copies of the collective bargaining agreement in effect, 29 U.S.C. §414.

This Court has acknowledged that "harmony of interest between the union and the individual employee cannot always be presumed," *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 58 n. 19 (1974), that the union and the employer may control contractual remedies so as to render them "unworkable for the individual grievant." *Vaca v. Sipes*, 386 U.S. at 854, and that thus the basic system of reliance upon a balance of economic power must be tempered by some measure of judicial protection for individual

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Clellan Committee), Senate Report 1417, p. 4, 85th Cong. 2d Sess. (1958). In fact evidence was specifically adduced before the McClellan Committee of collusion between Anchor Motor Freight and Teamster officials. See Transcript of Hearings of Select Committee, pp. 19309-19354 (July 7, 1959).

employees from abuses of the awesome power vested by law in the contracting parties. Accordingly, this Court has held unions to a duty to fairly represent their members, *Vaca v. Sipes, supra; Steele v. Louisville L. & N. R. Co.*, 323 U.S. 192 (1944), and has upheld the right of individual employees to file suit for breaches of collective bargaining agreements pursuant to §301 of the Labor Management Relations Act, 29 U.S.C. §185, *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962).

B. Reversal of the Decision Below Is Essential to the Integrity of Industrial Grievance Procedures and to the Preservation of Those Procedures as "Substitute[s] for Industrial Strife."

Another compelling reason for this Court to permit the unfairly represented petitioners to pursue their §301 action against their employer is to protect and preserve the fundamental principle of this Court's decisions in the "Steelworkers Trilogy"[23] of reliance upon contractual grievance procedures as the primary means of resolving industrial disputes. In order for contractual grievance procedures to serve their appointed function as "substitute[s] for industrial strife,"[24] it is necessary to insure not only their integrity but also the appearance of their integrity[25] so that their results will be accepted by the losing as well as the winning participants.[26]

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[23] *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960); *United Steelworkers of America v. Warrior and Gulf Navigation Company*, 363 U.S. 574 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

[24] 363 U.S. at 578.

[25] Cf. *Offutt v. United States*, 348 U.S. 11, 14 (1954).

[26] "The smooth functioning of the grievance machinery can lead to employee faith in the proper handling of industrial dis-

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Indeed, the occurrence of "rigged," "collusive," "agreed" or "horsetraded" cases is reported by virtually every informed observer of, and participant in, industrial grievance procedures.[27]

As this Court noted in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 58 n. 19 (1974):

> ". . . harmony of interest between the union and the individual employee cannot always be presumed. . . ."

It is also widely acknowledged that such "collusion" is virtually impossible to prove.[28] Accordingly the breach of

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putes. When the grievance machinery breaks down either because of employer repudiation of the grievance process or because a union wrongfully refuses to press an employee's grievance, faith in the system diminishes, and employees, unsatisfied with internal solutions to disputes, seek external action. Usually, the two external remedies used are wildcat strikes and court action under the doctrine of the duty of fair representation. The latter is clearly the preferred alternative." Flynn & Higgins, *Fair Representation: A Survey of the Contemporary Framework and a Proposed Change in the Duty Owed to the Employee*, 8 SUFFOLK U. L. REV. 1096, 1098-1099 (1974).

[27] See Atleson, *Disciplinary Discharges—Arbitration and NLRB Deference*, 20 BUF. L. REV. 355, 380 (1971); Azoff, *Joint Committees as an Alternative Form of Arbitration Under the NLRA*, 47 TUL. L. REV. 325, 336 (1973); Blumrosen, *The Worker and Three Phases of Unionism: Administrative and Judicial Control of the Worker-Union Relationship*, 61 MICH. L. REV. 1435, 1524 (1963); Cox, *Rights Under a Labor Agreement*, 69 HARV. L. REV. 601, 630 (1956); Epstein, *The Agreed Case: A Problem in Ethics*, 20 ARB. L.J. 41 (1965); FLEMING, THE LABOR ARBITRATION PROCESS, 166-198 (1967); Fuller, *Collective Bargaining and the Arbitrator*, 1963 WIS. L. REV. 3, 18-22; Tobias, *Individual Employee Suits for Breach of the Labor Agreement and the Union: Duty of Fair Representation*, 5 U. TOL. L. REV. 514, 542 (1974); WIRTZ, THE ARBITRATOR AND THE PARTIES, 17, 26-32 (McKelvey ed. 1958).

[28] See *Modern Motor Express, Inc.*, 149 NLRB 1507, 1512 (1964); Atleson, *supra*, n. 27, at 369, 381; Azoff, *supra*, n. 27, at 339; Lewis, *Fair Representation in Grievance Administration: Vaca v. Sipes*, 1967 SUP. CT. REV. 81, 98 (1967); Simpson and Berwick, *Exhaustion of Grievance Procedures and the Individual Employee*, 51 TEX. L. REV. 1179, 1204, 1228 (1973).

contract-duty of fair representation law suit represents the only significant check against breaches of the integrity of contractual grievance procedures detrimental to individual employees "stripped of traditional forms of redress by the provisions of federal labor law."[29]

However, the holding of the Sixth Circuit in the instant case, that employees given the form of a contractual grievance proceeding are bound by the result regardless of how unfairly their grievance may have been presented and how demonstrably innocent they may be, virtually immunizes such proceedings from judicial scrutiny. This total "hands off" doctrine[30] will inevitably breed such abuses in contractual grievance procedures as to undermine their ability to function as "substitutes for industrial strife."

Total "hands off" doctrines fly in the face of Lord Acton's famous dictum that ". . . absolute power tends to corrupt absolutely," and have not had a happy history where adopted as talismanic rules of law. Perhaps the best example of such disastrous judicial experience is in the area of prison conditions, where decades of a virtually absolute "hands off" policy[31] generated horrendous abuses culminating literally in the discovery of "buried bodies" and the declaration of one state's entire prison system as violative of the Eighth Amendment's prohibition against cruel and unusual punishment.[32]

Ultimately this Court recognized that even where substantial values were served by a fundamental "hands off"

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[29] *Vaca v. Sipes, supra*, at 182.

[30] Clark, *The Duty of Fair Representation: A Theoretical Structure*, 51 TEX. L. REV. 1119, 1167 n. 178 (1973).

[31] See Note, *Beyond the Ken of the Courts: A Critique of Judicial Refusal to Review the Complaints of Convicts*, 72 YALE L.J. 506 (1963).

[32] *Holt v. Sarver*, 309 F. Supp. 362 (E.D. Ark. 1970), *aff'd* 442 F.2d 304 (8th Cir. 1971).

policy, there must be some residual judicial check against abuses. *Procunier v. Martinez*, 416 U.S. 396, 404-406 (1974); *Wolff v. McDonnell*, 418 U.S. 539 (1974).

The checking-safety valve function[33] of the very limited review[34] afforded by §301—fair representation actions—is essential to the integrity of contractual grievance procedures and to their preservation as "the very heart of the system of industrial self government."[35] Accordingly it is imperative that this Court reject the per se rule adopted by the Sixth Circuit in binding petitioners to the result of a grievance proceeding in which they were not fairly represented.

IV. ANALYSIS OF THE RELEVANT LABOR POLICY INTERESTS INVOLVED IN THE INSTANT CASE DICTATE REVERSAL OF THE SUMMARY JUDGMENT AWARDED TO THE EMPLOYER.

Even if this Court is not inclined at this time to adopt the per se rule suggested by *Vaca v. Sipes*, i.e. that proof of unfair representation in the processing of his grievance entitles an employee to litigate his §301 claim in all cases, a balance of relevant labor policy interests involved in this case dictates such a rule for cases of the instant type.

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[33] "Employees who seek legal remedies must have faith in the manner in which the court arrives at its conclusion; otherwise, employees will refuse to seek court action and will resolve their disputes through industrial disturbances. The doctrine of the duty of fair representation can provide aggrieved employees with the opportunity to adjudicate their disputes in a neutral forum. The success of this doctrine in helping to eliminate industrial work stoppages depends upon whether courts are willing to assume the proper role necessary to satisfy the needs of aggrieved employees." Flynn & Higgins, *supra* note 26, at 1099.

[34] Many commentators have even suggested that the *Vaca* standard of review is too restrictive and should be expanded. See e.g. Clark, *supra* n. 30 at 1177-1178; Lewis, *supra* n. 28 at 123-126; Tobias, *supra* n. 21 at 86-91.

[35] *United Steelworkers v. Warrior and Gulf Navigation Co.*, 363 U.S. 574, 581 (1960).

A. Petitioners Were Discharged for Alleged Dishonesty Which They Denied.

1. Discharge cases involve the maximum harm to individual employees.

The plight of the petitioners and the reasons why discharge is often referred to as "industrial capital punishment"[36] have been eloquently described by one recent commentator:

> "The consequences of discharge are bleak. A semi-skilled employee over 40 rarely can find a new job with comparable pay and benefits. It is difficult for an employee to pull up stakes and move to a new community where the job market may be more attractive. The discharged employee carries the stigma of his 'crime' forever. Employer references are not available, and he has more difficulty in getting a new job than an employee who has quit or has been laid off. Credit ratings may be adversely affected. Employee ego, self-confidence, and pride suffer lasting injury. Standing is diminished in the eyes of family and friends. Seniority, promotion, vacation, and pension rights and other fringe benefits dependent on length of service are lost.
>
> "Discharge is a catastrophe for his family. Unemployment benefits often are unavailable. The family usually accumulates debts and faces hardship during the period of unemployment and the first years of reemployment at lower earnings on a new job."[37]

In short, there can be no greater harm suffered by an individual employee.

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[36] Azoff, *supra* n. 21 at 364.

[37] Tobias, *supra* n. 21 at 57-58.

2. Discharge grievances maximize the risks of collusion and unfair representation.

Discharge grievances involving factual disputes tend to involve less of the collective interest of the entire shop than do seniority or other grievances requiring contract interpretation. If the grievance is lost, the union feels the loss less because its relationship with the discharged employee is terminated. By reason of the termination of the relationship, the employee is deprived of the opportunity to exercise internal and political remedies within the union as protection against unfair representation.[38]

Moreover, discharge grievances present the opportunity for both employer and union to get rid of individual employees who are troublesome to both, such as petitioners in the instant case.[39]

This Court has acknowledged that the results of grievance proceedings should be viewed in a different light where circumstances indicate reason to suspect that "harmony of interest between the union and the individual employee cannot be presumed."[40]

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[38] Lewis, *supra* n. 28 at 124.

[39] As more fully set forth in the Statement of the Case, *supra*, at pp. 8-9, petitioners had constantly complained about the working conditions at Anchor's Lordstown Terminal and about the lack of representation provided by the Union in dealing with their complaints, all of which culminated in a wildcat strike during which some of the petitioners filed unfair labor practice charges against Anchor (R. 152-155) and published a notice warning the public of the operation by Anchor of unsafe equipment (R. 156). As a result of the strike, both Anchor and the Union were reluctantly compelled to renegotiate the local rider which each had refused to do previously (R. 156).

[40] *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 58 n. 19 (1974). Compare *Gateway Coal Co. v. United Mine Workers*, ———U.S.———, 94 S. Ct. 629 (1974), where the Court concluded that such a harmony of interest could more readily be presumed with respect to a safety dispute.

3. Judicial review of discharge grievances poses minimal risks of jeopardizing the "System of Industrial Self-Government" favored by "The Trilogy."

Wrongful discharge grievances, such as in the instant case, usually present only questions of fact and seldom involve far-reaching questions of contract interpretation affecting numerous other employees.[41] A judicial determination as to whether petitioners were or were not guilty of the dishonesty alleged would not set any contract precedent, would not impose any alteration in the legitimate relationship between the contracting parties, and would not require significant special expertise as to the conditions or common law of the shop.[42]

All of the foregoing considerations have led most commentators applying a balancing of interests analysis to conclude that judicial relief should be more readily available to employees in discharge cases.[43]

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[41] Lewis, *supra* n. 28 at 124; Simpson and Berwick, *supra* n. 28 at 1229-1230.

[42] Cf. *United Steelworkers of America v. Warrior and Gulf Navigation Company*, 363 U.S. 574 (1960).

[43] See Blumrosen, *Legal Protection for Critical Job Interests: Union-Management Authority Versus Employee Autonomy*, 13 RUTGERS L. REV. 631 (1959); Lewis, *Fair Representation in Grievance Administration: Vaca v. Sipes*, 1967 SUP. CT. REV. 81, 123-126 (1967); Simpson and Berwick, *Exhaustion of Grievance Procedures and the Individual Employee*, 51 TEX. L. REV. 1179, 1229-1230 (1973); Tobias, *A Plea for the Wrongfully Discharged Employee Abandoned by his Union*, 41 U. CIN. L. REV. 55, 87 n. 83 (1972) and authorities cited therein.

B. Petitioners' Discharge Was Upheld by Joint Grievance Committee Proceedings Inherently More Susceptible to Corruption Than Traditional Arbitration and the Result Is Therefore Entitled to a Lesser Standard of Finality.

Petitioners' discharge was upheld by a Teamster joint grievance committee comprised of an equal number of employer and union representatives without any neutrals (R. 142).[41] The composition of such committees greatly magnifies the risk of collusion and "horsetrading."[45] As acknowledged even by one of its leading advocates:

> "The most criticized aspect of joint committees is the encouragement of 'horsetrading.' While 'horsetrading' exists in many union-management scenarios and to an extent even when traditional terminal grievance arbitration is available, the joint committee is structured so as to insure maximization and exploitation of opportunities for wheeling and dealing.
>
> * * * * *
>
> "In the constant *quid pro quo* of the committee system, there is always a suspicion that an employee is being sacrificed to appease an employer, to buy his good will for future negotiations or in return for past favors rendered." Azoff, *supra* n. 43 at 328-329.[46]

Although he argues that the strengths of the joint committee system make it preferable to arbitration for disputes requiring contract interpretation, modification, and renegotiation, Azoff concedes that discharge cases should perhaps be delegated to an arbitrator, *id.* at 364. Even the

[41] The "joint committee" system is fully described and evaluated in Azoff, *Joint Committees as an Alternative Form of Arbitration Under the NLRA*, 47 TUL. L. REV. 325 (1973).

[45] Atleson, *Disciplinary Discharge—Arbitration and NLRB Deference*, 20 BUF. L. REV. 355, 369 (1971).

[46] For a firsthand account of the actual operation of the joint committee system, see E. JAMES & R. JAMES, HOFFA AND THE TEAMSTERS, 167-185 (1965).

leading advocate of attributing finality to arbitration results notwithstanding breaches of the duty of fair representation would not accord such treatment to decision of joint grievance committees, contending that they should be treated as "simply an agreement by the union that management did not violate the agreement."[47]

Although this Court has held that joint grievance committee decisions are enforceable as arbitration awards, *General Drivers Local 89 v. Riss & Co.*, 372 U.S. 517 (1963), it has also indicated that judicial relief will be more readily afforded from remedies "administered by the union, by the company, or both, to pass on claims by the very employees whose rights they have been charged with neglecting and betraying." *Glover v. St. Louis-San Francisco Ry. Co.*, 393 U.S. 324, 330-331 (1969).

It is little wonder that the majority of reported §301 cases attacking grievance decisions arise in the trucking industry which utilizes the joint grievance committee procedure.[48] Where the impartiality of the decisionmaker is so questionable, a fair presentation of the grievance is critical, and the need for some residuum of meaningful judicial scrutiny is optimal.

C. There Is Overwhelming Evidence of Petitioners' Innocence of the Dishonesty for Which They Were Discharged.

The deposition testimony of motel owner Repicci and motel clerk Pagano overwhelmingly establishes petitioners' innocence and explains the evidence of apparent dishonesty for which they were discharged. Clerk Pagano

[47] Feller, *A General Theory of the Collective Bargaining Agreement*, 61 CALIF. L. REV. 663, 836-838 (1973); Clark, *The Duty of Fair Representation: A Theoretical Structure*, 51 TEX. L. REV. 1119, 1169 (1973).

[48] Tobias, *supra* n. 27 at 540.

testified that he handled all of the transactions in question (R. 51-53), that the amounts shown on the receipts accurately reflect what petitioners paid and that the discrepancy between the receipts and the registration cards is attributable to his having recorded a lesser amount on the registration card and pocketed the difference (R. 53-54) and that he committed perjury when he swore to the notarized statement obtained by Anchor (R. 55).

Owner Repicci testified that he personally handled none of the transactions in question (R. 65), that his brother-in-law Pagano had handled them, having authority to sign his name (R. 65), that he (Repicci) had no personal knowledge of the transactions (R. 158-159) and that his notarized statements (R. 188-189) had been based solely on comparison of the receipts with the registration cards and his brother-in-law's word (R. 66-67).

D. The Union's Breach of Its Duty of Fair Representation Was Flagrant and Highly Prejudicial.

The evidence establishes that the Union's conduct in handling petitioners' grievance was at best arbitrary and irrational, and in all probability was in "bad faith" out of hostile motives toward petitioners and "friendly" motives toward the Company.

Union officials affirmatively misled petitioners into desisting from gathering their own exculpatory evidence, by advising them that there was no need for petitioners to investigate or do anything (R.40-41, 73-74), that they should forget it (R. 49), do nothing (R. 49), and let business agent Angelo take care of it (R. 46, 79). This advice was coupled with assurances of certain success in retaining their jobs (R. 46, 79-80). The evidence discloses no conceivable rational basis for either the advice or the assurances. Indeed, the respondents have never even hy-

pothesized a conceivable rational basis for this conduct by the union.

If the union had advised petitioners that the Company's evidence against them was so compelling as to render petitioners' grievance futile, absent substantial countervailing evidence of innocence, and that union resources could not be devoted to processing futile grievances, there would have been a rational basis for such a position. Moreover, it would have apprised petitioners that it was their burden to investigate and to gather evidence of innocence in order to persuade the union to process the grievance. However, the union did not adopt this rational stance.

If the union had advised petitioners that, while it would process their grievance, it lacked the resources to investigate or gather evidence of innocence and that petitioners must assume the burden of doing so, there would have been a rational basis for such a position and it would have afforded petitioners the opportunity to gather exculpatory evidence.

If the union had merely failed to investigate and to advise petitioners of the necessity or desirability of their doing so in their own behalf, these omissions may have constituted negligent but not necessarily irrational conduct. However, the union did not even assume this nonfeasant posture.

While there is no conceivable benevolent explanation for the union's apparently irrational conduct toward petitioners, there is one conceivable rational explanation for the conduct, to wit: hostile motives toward petitioners. There is substantial evidence of a history of hostility between petitioners and union officials and of a sweetheart relationship between those officials and the Company. See Statement of the Case, *supra* at pp. 8-9.

By reason of the union's misconduct petitioners were deprived of the opportunity to present the only evidence which could have established their innocence—the testimony of motel owner Repicci and motel clerk Pagano. The ensuing judgment of guilt by the grievance committee is thus demonstrably unreliable as a direct result of the union's breach of its duty of fair representation.

CONCLUSION

The central issue in this case is whether the eight petitioners, whose livelihoods have been jeoparized and whose good names have been ruined by demonstrably false charges of dishonesty, are to be permanently deprived of their jobs and their honor because they were given the form without the substance of a grievance hearing. Neither elemental principles of justice nor national labor policy should permit such a result.

Accordingly, petitioners pray that this Court reverse the judgment of the Sixth Circuit affirming the district court's summary judgment in favor of respondent Anchor Motor Freight and remand the case for a trial, in which they will have the opportunity to vindicate their good names and end the years of grief and economic ruin which have plagued them since their discharge for alleged dishonesty of which they were not guilty.

Respectfully submitted,

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October Term, 1974

No. 74-1025

BURTICE A. HINES, *et al.*,
Petitioners,

vs.

ANCHOR MOTOR FREIGHT, INC., *et al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT ANCHOR MOTOR FREIGHT, INC.

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Supreme Court of the United States

October Term, 1974

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BURTICE A. HINES, *et al.*,
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Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT ANCHOR MOTOR FREIGHT, INC.

QUESTION PRESENTED FOR REVIEW

When the parties have exhausted the contractual grievance machinery and the employer has prevailed in a discharge under the labor agreement and the committee decision is predicated on a rational basis, can a claim of wrongful discharge prevail against the employer subsequently in court proceedings when there is no evidence of any wrongdoing by the employer and no evidence of any taint in the grievance machinery, regardless of any claim against the union for unfair representation, and particularly when there is no evidence that the claim of unfair representation would have produced a different arbitral result.

STATUTES INVOLVED

In addition to the statute cited by the petitioners, the following statutes are also involved:

29 U.S.C. §157

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

29 U.S.C. §171 (a)

> It is the policy of the United States that—
>
> (a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

29 U.S.C. §173 (d)

> (d) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. . . .

STATEMENT OF THE CASE

A. Summary of Proceedings Below.

The petitioners brought this action in the United States District Court for the Northern District of Ohio, Eastern Division, alleging that they had been wrongfully discharged from their employment by Anchor Motor Freight, Inc., where they had been employed as truck drivers. They further alleged that Teamsters Local Union No. 377 and the International Brotherhood of Teamsters had breached their duty of fair representation by virtue of the manner in which they handled the petitioners' grievances in connection with the aforementioned discharges.

After several years of discovery, all of the defendants moved for summary judgment and each defendant's motion was granted by the district court. The Sixth Circuit affirmed the summary judgments in favor of Anchor Motor Freight and the International Union and reversed and remanded the judgment in favor of the local union. The petitioners then asked this Court for review, and certiorari was granted.

B. Anchor Reimbursement of Drivers for Falsified Motel Receipts Leads to Their Discharges.

Each of the petitioners was formerly employed by Anchor Motor Freight, Inc. as an over-the-road truck driver, transporting automobiles from the Anchor terminal adjacent to the General Motors plant at Lordstown, Ohio, to automobile dealers throughout the eastern part of the United States. The employment relationship between the petitioners and Anchor was governed by a labor agreement known as the National Master Automobile Transporters Agreement and Central Conference Area Supplemental Agreements covering Truckaway, Driveaway and Local Agreements. This contract is made up of a National Master

Agreement covering all car haulers, a Central States Supplement covering terminals located in the central part of the United States, and local riders covering minor details for individual terminals.

Anchor reimbursed its drivers for money spent for lodging while the drivers were on the road, based on motel receipts submitted to the company. On May 31, 1967, Anchor Motor Freight learned that some of its drivers were reporting expenses to Anchor for reimbursement in amounts in excess of the expenses which these drivers actually incurred while they were staying overnight in Batavia, New York, at the Towne Manor Motel and Apartments. Anchor conducted an extensive investigation immediately. Robert DeLeo, the Lordstown Terminal Safety and Personnel Director at that time, interviewed Anthony Pagano, the motel room clerk. DeLeo inquired as to the motel's rates for single rooms and double rooms, and then called the Lordstown terminal and found out that these drivers were charging the company a different rate than the established rate at the motel (A. 121). Mr. DeLeo obtained a sworn statement from Pagano at that time, stating that the motel's records were accurate (A. 180-186). Pagano also gave DeLeo hotel registry cards and copies of the motel receipts (A. 122). On that same date DeLeo obtained a statement from Joseph Repicci, owner of the motel, stating that the information submitted by Pagano was correct (A. 187). Repicci also gave Anchor a sworn statement that on the evening of May 15, 1967, three of the petitioners each paid $5.20 for lodging, only one of them registered, and *each* of them was given a receipt in the amount of $8.32 (A. 188; see also exhibits at A. 243).

Anchor officials assembled this information at their terminal at Lordstown. They compared the information given by Pagano and Repicci with the information submitted by the drivers for reimbursement. This included

receipts for hotel expenses, the summary of driver expense forms completed by the drivers, and the drivers' logs (A. 235 through 268). The exhibits on page 235 of the Appendix are typical of the information adduced by this investigation. The receipts presented to Anchor by drivers Fitzpatrick and Cartwright for May 23, 1967 state that each driver paid $8.32 for a room on that day. Fitzpatrick's receipt is for Room 9, and Cartwright's receipt is for Room 7. However, the hotel registration card for that date shows that both Cartwright and Fitzpatrick stayed in Room 9 on May 23, 1967, and that they paid a *total* of $10.40 for the room, i.e., each driver actually paid $5.20. This was confirmed by Pagano (A. 186). There was similar evidence involving each of the petitioners.

Anchor's Director of Labor Relations Daniel Sandy investigated the incident further. On June 5, 1967, Sandy flew to Batavia, New York, and interviewed Pagano and Repicci (A. 129-130). Pagano described for Sandy the place where the drivers stayed and how they were charged a stated amount. This amount was different than the amount the drivers charged Anchor for reimbursement (A. 130). Repicci gave Sandy a notarized statement at that time (A. 123), which stated that on many occasions Anchor drivers had been assigned two to a room with just one driver registering and that the motel received payment from one person but gave two separate inflated receipts as the drivers requested. Repicci stated that this was done in order to prevent the drivers from going to other motels (A. 189).

Sandy further stated that he conducted an inquiry as to the reliability of Pagano and Repicci. He found that these people were substantial citizens and above reproach (A. 133).

C. At the Insistence of the Union, Discharges Are Held in Abeyance Pending Joint Grievance Committee Hearing.

Anchor requested the discharge of the petitioners on June 5, 1967, pursuant to Article 32 of the labor agreement which provides that "[t]he Employer shall not discharge or suspend any employee without just cause," and that "no warning notice need be given to an employee before he is discharged if the cause of such discharge is dishonesty . . . ." (A. 170). On that date a meeting was held at the Anchor terminal. In attendance were the terminal grievance committee, the business agents from Teamsters Local 377, the petitioners, and representatives of Anchor (A. 103). The evidence against the petitioners was presented at that meeting. It consisted of the motel registration cards which DeLeo had obtained from Pagano, the motel receipts which the drivers had submitted to Anchor for reimbursement of expenses, the Anchor form entitled Summary of Driver Expenses which each driver signed when he presented the aforementionel motel receipts for reimbursement, the daily logs kept by each driver, and the statements of Pagano and Repicci (A. 123, 173 through 189, and 235 through 268). The motel registration cards, which were kept as part of the motel's regular business records until Mr. Pagano made them available to Anchor, show that more than one of the petitioners stayed in a particular room on a particular night. It also states the total amount that they paid for that room. However, each man had presented to the company a receipt for the price of a *single* room for that night, as shown on the receipts submitted to Anchor and the Summary of Driver Expenses.

This documentary evidence, which was presented as to each of the petitioners, supported by the statement of the motel clerk Pagano and motel owner Repicci, clearly indicated that each of the petitioners had been dishonest,

had submitted false receipts in excess of the expenses which he had actually incurred, and had thereby improperly received "reimbursement" in excess of the amount to which he was entitled.

Notwithstanding this evidence, at the meeting on June 5, 1967, the petitioners, Local 377 and its business agents insisted that the petitioners were innocent and that Anchor must rescind the discharges and return the petitioners to work. After extensive discussions it was finally agreed that the case would be submitted to the Joint Arbitration Committee, which was the contractually established arbitrator, and that the petitioners would continue to work until the committee reached a decision on the matter (A. 133).

The contractual grievance procedure is set forth in Article 7 of the National Master Agreement (A. 218-224). Section 2 provides that grievances "shall first be taken up by the employee involved, and if no settlement is reached, then taken up between the business agent of the Local Union involved and the Employer representative." If the dispute is not resolved, "either party has the right to file its grievance with the appropriate Local Committee or Joint Area Committee referred to in Section 3. . . ." (A. 218-19). Section 3 establishes Joint Area Committees, consisting of an equal number of employer and union representatives (A. 220). Section 4 (b) empowers the Joint Area Committees "to settle disputes and grievances which cannot be settled in accordance with Section 2 of this Article." (A. 222). Section 5 provides that "a decision by a majority of a Panel of any of the Committees shall be final and binding on all parties, including the employee and/or employees affected." (A. 222).

D. Parties and Grievants Are Heard and the Joint Grievance Committee Sustains the Discharges.

On July 26, 1967, the petitioners' case was presented to the Joint Arbitration Committee in Detroit, by the petitioners and Local 377 business agent John Angelo, who asserted that the men had been falsely accused. He charged that if anyone was guilty it was the motel owner and/or clerk (A. 135-136). Each petitioner was given an opportunity to speak in his own behalf before the committee and some of them did speak directly to the committee. For example, petitioner Hines stated that "I made my statement and I was there in person and told them what happened." (A. 32). Petitioner Croft stated that Angelo told the committee that "we didn't take any money or anything." He stated that he personally told the committee that he had an opportunity to say all that he had to say that day to the committee (A. 75-76). He further testified that he attended the hearing, that everybody who wanted to go attended the hearing, and that anybody who wanted to say anything in his own behalf was given the right to do so (A. 80). He stated that he told the panel "what took place as far as what I paid for the room and I had nothing to do with the card that the motel owner kept to himself," and that the evidence that went to the panel was his disclaimer of doing anything wrong (A. 80). He also said that "maybe two-thirds of the men had something to say" (A. 81). The union's presentation, including the presentations by the petitioners, lasted approximately three hours (A. 136). The company's presentation lasted an additional forty-five minutes (A. 139). The parties were given an opportunity for rebuttal. Finally, the committee inquired of the petitioners as to whether they felt they had been given a full hearing and they said that they had (A. 141).

The panel deliberated for approximately two hours

(A. 141). Its decision was published in the minutes of the meeting, which were distributed a few days after the conclusion of the hearings. The committee held in these cases that "[b]ased on the facts, evidence and statements presented with respect to these eleven cases, the discharges of [the petitioners] are upheld." (A. 193). According to the terms of the applicable labor agreement, this decision is final and binding (Article 7, Section 5(c), A. 222).

E. Petitioners Retain Counsel and Seek a Rehearing on "New Evidence"; Committee Finds Evidence Is Not "New."

After the committee had upheld the discharges the petitioners engaged the services of an attorney. The attorney went to Batavia and obtained an affidavit from the motel owner, Repicci (A. 48). He did not obtain an affidavit from the room clerk, Pagano. Based on Repicci's affidavit the petitioners requested a rehearing, and the case was again presented to the Joint Arbitration Committee on October 26, 1967 (A. 145). At that time the union stated that they had new evidence in the matter and requested that the case be reopened on this new evidence. A hearing was held on the new evidence and Mr. Angelo initially spoke for the union. He distributed copies of a document which he then read to the committee (A. 146). Angelo read Repicci's statement to the committee, which is reproduced at pages 199 through 209 of the Appendix. In this statement, all that Repicci said was that his previous statement was based on the motel records and on what Pagano had told him and that he had no personal knowledge of the amounts paid by these particular men.

After reading the statement to the committee Angelo asked the petitioners if he had left anything out, if there

is anything that they had forgotten to tell him or that they want him to tell the committee. He also asked them to go ahead and talk to the committee. They were all satisfied that he had presented the case properly on their behalf (A. 90).

The company took the position that nothing new had been introduced and that this "new evidence" was repetitious, as the petitioners and the union had taken the same position on the same issues at the original hearing (A. 147).

The committee decided that "by unanimous vote, the committee held that the requests for rehearing are denied because there was no new evidence presented which would justify a reopening of this case." (A. 212).

The contractual grievance procedures were therefore fully exhausted and the discharges fully sustained.

F. Witness Pagano Recants Prior to a "Court" Proceeding More Than One Year After the Grievance Committee Sustained the Discharges and Thereby Avoids Testifying in "Court."

On September 29 and 30, 1968, approximately one and one-half years after the June 5, 1967 discharge meeting and more than one year after the arbitration hearing (July 26, 1967), Anchor requested Repicci and Repicci sent Pagano to Cleveland to testify on Anchor's behalf at an unemployment compensation hearing involving some of the petitioners (A. 275-276). In a deposition given in *1971* in this lawsuit, Pagano claimed that it was at this point, when he was about to testify in "court" (A. 57), that he changed his version of the story. He now claimed that *he* had kept the difference between the amounts that appear on the motel records and the amounts on the receipts submitted to Anchor (A. 55-57). Because he changed his story Pagano was not required to testify in "court."

At the time of both grievance committee hearings the evidence overwhelmingly indicated that the petitioners were dishonest and that the discharges were valid. No evidence was withheld from the Committee nor does the record indicate any such suggestion. The committee heard everything the petitioners were able to submit, including the second Repicci statement. The union did not withhold or prevent the Committee from hearing Pagano's second story because he was only telling one story—that the petitioners were the culpable parties—and even the petitioners' attorney was unable to obtain a contrary story from him in 1967.

Even after that date, there is still no reason to assume as the petitioners do that Pagano's second statement is true and his first statement, also given under oath, is no longer to be believed. In any event, these matters were *in issue* and were considered by the committee in both hearings.

During his deposition Pagano was asked if anyone from Anchor had forced him to tell anything but the truth at any time. He responded, "No. I did this all on my own." (A. 61).

G. Petitioners Seek Redress Before the National Labor Relations Board but the Labor Board Finds Insufficient Evidence of an Unfair Labor Practice and General Counsel Denies Two Appeals for the Reason that Employees Were Discharged Because of the "Company's Good Faith Belief of Their Dishonesty."

The petitioners also filed unfair labor practice charges against Anchor and Local 377 arising out of the discharges which are the subject of this case. On January 9, 1968, the Acting Regional Director of the National Labor Relations Board, Region 8, ruled that the charges against

Anchor and Local 377 have been carefully investigated, that there is insufficient evidence of an unfair labor practice, and that he is refusing to issue a complaint in these matters (A. 269-270). Petitioners then appealed to the National Labor Relations Board from the Regional Director's refusal to issue a complaint. On April 1, 1968, the general counsel of the National Labor Relations Board informed petitioners that their appeal is denied. The general counsel indicated that based on the evidence that the company had of the employees' dishonesty, "the burden could not be sustained of establishing that the employees had been discharged for any reason other than the Company's good faith belief of their dishonesty." (A. 271).

Petitioners again requested reconsideration from the general counsel of the National Labor Relations and on May 7, 1968, their request was again "rejected."

It is the position of the petitioners that the subsequent change of position by Pagano, many months after the conclusion of the grievance committee adjudication, renders the discharges "wrongful." They further contend that what they characterize as Pagano's later admission "overwhelmingly" establishes the petitioners' innocence. However, the petitioners do not explain why the second Pagano statement is entitled to be treated as credible and his first statement, which was also made under oath, is not entitled to be believed, nor is it explained why Pagano, who was available to petitioners' counsel before the rehearing at Detroit to determine whether new evidence would justify the grievance committee to rehear the case, does not change his original claim that the men requested and received inflated motel receipts. In any event this very issue was before the grievance committee. On the same deposition in 1971 where Pagano recants he also states that other hotels in the area give inflated receipts. "According to my idea, I think they are all doing it." (A. 59).

H. Anchor Is Sued by Employees and After Extensive Discovery the District Court Grants Defendants' Motions for Summary Judgment and the Court of Appeals Affirms as to Anchor and the International Brotherhood of Teamsters.

The petitioners were discharged pursuant to the labor agreement, and the discharges were sustained by the grievance machinery established in the contract. The grievance committee heard testimony in support of the petitioners' allegations that the motel clerk (Pagano) and/or the motel owner (Repicci) were the dishonest parties who had kept the difference between the amounts appearing on the registration cards and the amounts on the receipts submitted to Anchor. The committee resolved this specific question adversely to the petitioners when it held that the discharges would be sustained. The petitioners then filed the instant case in the United States District Court for the Northern District of Ohio. The defendants filed motions for summary judgment, and since there was no evidence substantiating the petitioners' allegations, on September 25, 1973, the district court granted Anchor's motion for summary judgment, holding that

> [T]he Joint Committee in Detroit upheld the company's position; and further, on a rehearing for new evidence, again affirmed the discharge of the employees. Thus, all of the available steps of the grievance procedure have been followed and a decision rendered. This court, in following the dictates of the Trilogy as laid down by the Supreme Court, can come to no other conclusion but that the summary judgment motions by defendants must be granted and the finality of the arbitration process affirmed. 72 LC ¶13,987.

On November 22, 1974, the United States Court of Appeals for the Sixth Circuit affirmed, stating that petitioners are

attempting to relitigate their grievances and holding that

> No evidence of any misconduct on the part of the employer to avoid the arbitration award is suggested. Although appellants argue that there was a conspiracy between the union and the company, none of the evidence offered to substantiate this claim is sufficient under the requirement of *Bawloski, supra*, that something more than suspicion be shown. Accordingly, we hold that the district court correctly granted summary judgment in favor of Anchor Motor Freight. 506 F.2d 1153, 1157-1158 (Citations omitted).

SUMMARY OF ARGUMENT

Can an innocent party to an arbitration proceeding pursuant to a collective bargaining agreement be prejudiced and penalized by virtue of the wrongful conduct of the other party, particularly when there is no evidence that such "wrongful conduct" had any effect on the outcome before the grievance committee. The law is very clear that arbitration of labor disputes is in the national interest. The only variations are in those cases where a statute bestows an individual right such as in a civil rights matter (*Alexander v. Gardner-Denver Company*, 415 U.S. 36 (1974)) and on the other hand those situations where employer *and* union jointly contribute to the wrong by a breach of contract and unfair representation (*Vaca v. Sipes*, 386 U.S. 171 (1967), although the employer was not a party and the real issue in the case was the extent to which the union was obligated to utilize the grievance machinery).

If we regard *Alexander v. Gardner-Denver Company* and *Vaca v. Sipes* as opposite ends of the spectrum, we have before this Court a middle road which should lay the predicate for the proposition that so long as there is no collusion, conspiracy or fraud to taint the grievance machinery an innocent employer shall not suffer any penalties as a result of the wrongdoing of the union and the arbitral award shall remain intact, thereby maintaining the integrity of the arbitral process and confining all damages to the union, for the reason that the duty to fairly represent is exclusively and separately the union's, and liability for a breach thereof is not conditioned on any joint employer conduct, provided, of course, that the union's unfair representation is of sufficient import to have changed the grievance committee result.

ARGUMENT

I. Contractual Arbitration of Labor Disputes Is National Congressional and Judicial Policy.

In the Labor Management Relations Act of 1947, as amended, Congress declared that it is the policy of the United States that "sound and stable industrial peace in the advancement of the general welfare, health, and safety of the Nation and of the best interests of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees." 29 U.S.C. §171(a). Congress further declared that "final adjustments by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement." 29 U.S.C. § 173(d).

It is in the national interest to effectuate the terms of collective bargaining agreements and to reinforce the bargained for dispute resolution mechanism. "Employees shall have the right to self-organization, to form, join, or assist

labor organizations, to bargain collectively through representatives of their own choosing . . ." 29 U.S.C. §157.

The importance of giving full effect to grievance and arbitration provisions as negotiated by the parties and as incorporated into labor agreements has long been recognized by this Court. In *United Steelworkers of America v. Warrior and Gulf Navigation Company*, 363 U.S. 574 (1960), the Court held that "arbitration is the substitute for industrial strife"; that it is "part and parcel of the collective bargaining process itself"; and that "the grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government." The Court further stated that "arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties. The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content are given to the collective bargaining agreement."

In *United Steelworkers of America v. American Manufacturing Co.*, 363 U.S. 564 (1960), the Court instructed the federal courts to defer to the decisions made under contractually established grievance procedures, for to do otherwise "usurps a function which under that regime is entrusted to the arbitration tribunal." In *United Steelworkers of America v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960), the Court reiterated the proposition that negotiated grievance procedures must be supported when it further discouraged judicial review of the merits of arbitration decisions by holding that "review by a court of the merits would make meaningless the provisions that the arbitrator's decision is final, for in reality it would almost never be final."

In *Humphrey v. Moore*, 375 U.S. 335 (1964), this Court held that the decision of a joint grievance committee, such as the grievance committee in this case, is final and binding on the parties. And, in *Republic Steel v. Maddox*, 379 U.S. 650 (1965), the Court stated the requirement that an employee making a claim for breach of collective bargaining agreement is bound by the terms of that agreement, including the contractual grievance procedures. This Court has unequivocally adopted a position that negotiated grievance procedures are entitled to the support of the judiciary and that the final and binding resolution of a dispute under a labor agreement must in fact be "final and binding."

State courts likewise will refuse to vacate an arbitration award even though there may be "an error of law or fact. It has been held that the arbitrator is the final judge of both law and facts." An award will not be set aside where "no abuse of authority appears." *Goodyear v. Local Union No. 200*, 42 Ohio St. 2d 516 (1975).

This Court also held that if the parties choose a certain "instrument for the definitive settlement of grievances under the agreement . . . it is of course not open to the courts to reweigh the merits of the grievance." See *General Drivers, Warehousemen and Helpers, Local Union No. 89 v. Riss & Company*, 372 U.S. 517 (1963), approving a joint grievance committee identical with the one involved in this case.

II. National Policy Must Be Supported Unless a Statutory Prohibition or Joint Employer-Union Violations of Law or Contract Dictate Otherwise.

This Court has created certain limited variations to the doctrine of finality of the grievance procedures. The first major variation was established in *Vaca v. Sipes, supra,* where the Court held that an employee may seek judicial relief if "the union has sole power under the contract to invoke the higher steps of the grievance procedure, *and* if the employee-plaintiff has been prevented from exhausting his contractual remedies by the union's *wrongful* refusal to process the grievance." 386 U.S. at 184. The second major variation was recently established in *Alexander v. Gardner-Denver Company, supra.* The Court held that where a statute such as Title VII of the Civil Rights Act of 1964 establishes an *individual* right, independent of the labor agreement, an employee does not forfeit his private cause of action under the statute if he first pursues his grievance to final arbitration under the nondiscrimination clause of a collective bargaining agreement. This Court made it very clear that Title VII rights "are absolute and represent a congressional command . . ." and distinguished such rights from collective bargaining rights which "may be exercised or relinquished by the union as collective-bargaining agent . . ." It distinguished individual rights from the "majoritarian process." 415 U.S. at 51. In this case we are dealing with the majoritarian process and collective bargaining rights.

In their brief, the petitioners have alleged that the *Vaca v. Sipes* variation is relevant to this case, and that the decision of the Sixth Circuit is contrary to this Court's decision in *Vaca v. Sipes.* There are two fundamental differences between *Vaca* and the instant case. First, *Vaca* was a case in which the union refused to process a grievance to

the final stage of the contractual grievance procedure. Secondly, the employer was not a party to that lawsuit, and therefore the rights and obligations of the employer were not in issue before the Court. In this case, however, the union *did* process the petitioners' grievance through the final stage of the grievance procedure, i.e., to arbitration before the joint grievance committe. In fact, the union took the case to the arbitral panel on two separate occasions, and on both occasions the discharges were upheld. Secondly, in this case the employer and the union are *both* defendants. Unlike *Vaca* where the rights of the employer were not in issue, in the present case the question of the rights of the employer is a major issue for this Court to determine.

This Court has never directly confronted the issue of whether an employer whose position has been sustained by a final and binding award under a fully exhausted contractual grievance procedure can be subjected to further jeopardy by virtue of the allegedly wrongful conduct of the employees' representatives of their own choosing, i.e., the labor union, when the employer has not in any way participated in the union's allegedly wrongful conduct. While fitting within the line of cases stemming from the *Steelworkers Trilogy, Humphrey v. Moore, and Republic Steel v. Maddox,* the instant case represents a third variation that, in this case, the rights of an innocent employer must be recognized and protected. A vindicated employer is not obligated to give disgruntled employees rematch after rematch until they have finally selected victorious "representatives of their own choosing."

III. Unfair Representation Is Exclusively a Union Duty and Is Not Dependent Upon Joint Employer Conduct.

It is important to recognize the genesis of the wrongful discharge-unfair representation lawsuit. These are two distinct lawsuits which have been joined as a matter of convenience. The employer is not an indispensable party in the suit against the union and the union is not an indispensable party in the case against the employer. *Louis v. Shubert*, 300 F. Supp. 174 (W.D. Mo. 1969) and *Young v. United Steelworkers of America*, 49 F.R.D. 74 (E.D. Pa. 1969).

The allegedly wrongful acts of the employer and union are independent, as there has been no allegation that Anchor participated in the union's allegedly unfair representation, and there has been no allegation that the union participated in the discharge. Therefore, there is nothing to preclude a court from concluding, as the Sixth Circuit did in this case, that the case against the employer must be dismissed while at the same time holding that the case against the union must be set for trial. By this ruling the court has held that since the employer has been exonerated by the grievance committee the petitioners' only remaining claim is against the union, if any claim exists.

This Court has recognized that unfair representation and wrongful discharge are two separate and distinct causes of action. If a wrongful discharge is coupled with a claim of unfair representation there is no question that there can be an apportionment of damages. But where there is a claim of unfair representation and the employer is not implicated a separate action will lie against the union and a judgment against it can be had "in any event . . . for those damages that flowed from their own conduct." *Czosek v. O'Mara*, 397 U.S. 25 (1970). It is conceivable that the union may be responsible "for the whole of such damage."

See *Richardson v. Communications Workers of America*, 443 F.2d 974, 982 (8th Cir. 1971).

Liability and damages are interwoven with remedies that may be available to the petitioners from the wrongdoer and it would not be "uncommon for federal courts to fashion federal law where federal rights are concerned." *Textile Workers Union v. Lincoln Mills of Alabama*, 353 U.S. 448 (1957).

The employee is not without a remedy even if the employer is found free from wrong because an individual employee "has a right to remedy against the union breaching its duty of fair representation—a duty derived not from the collective bargaining contract but implied from the union's rights and responsibilities conferred by federal labor statutes." *Humphrey v. Moore, supra*, 375 U.S. at 356, and cases cited therein. In that case, like this one, petitioners were told "that they had nothing to worry about." This Court found "there is no substantial evidence of fraud, deceitful action or dishonest conduct." This Court stated further that "[w]e find in this evidence insufficient proof of dishonesty or intentional misleading on the part of the union. And we do not understand the court below to have found otherwise."

This Court also in *Humphrey v. Moore* concluded in an analogous situation that "[t]he decision of a committee, reached after proceedings under the agreement; is final and binding upon the parties, just as the contract says it is." Citing *General Drivers, etc. Union v. Riss & Company, supra.*

There is no factual or legal basis for claiming that there must be joint action between the union and the employer before any damages can be assessed, i.e.. that damages must be assessed against both. If one party is free from wrong all the damages are charged to the other party. If the union is free from wrong all damages may be charged

to the employer. Nothing prohibits the union from being assessed all damages where the employer is free from wrong. See *De Arroyo v. Sindicato De Trabajadores Packinghouse, AFL-CIO,* 425 F.2d 281 (1st Cir. 1970).

A back pay award was assessed against a union. The court said, in referring to "unfair representation," that "[t]he action exists independently of the §301 action against the employer . . ." *Butler v. Teamsters, Local 823,* 76 LC ¶10,739 (8th Cir. 1975).

The petitioners have argued that the employer must remain a party for the reason that "relief against the union alone would not be sufficient to make them whole." (Petitioners' Brief, p. 21). Where "[t]he evidence fails to show any conspiracy or joint action" and the union has failed to fairly represent a discharged employee "[t]he court cannot assume that the arbitrators would have found against [plaintiff] if his claim had been fairly presented." The court held that the arbitral award must stand even though it found the union failed to properly represent, and assessed damages against the union. No relief was granted against the company. See *Thompson v. International Association of Machinists,* 258 F. Supp. 235 (E.D. Va. 1966).

In this case, however, there is no longer a claim against the employer, as that issue has been decided by the committee. The petitioners' only remaining claim is against the union. They are not without a remedy. Rather, their remedy is against the *wrongdoer*. Anchor Motor Freight has done no wrong and therefore cannot be subjected to liability. The duty to represent fairly cannot be imputed to the employer and a breach of that duty causing damages shall be assessed only against the guilty party.

In his concurring opinion in *Humphrey v. Moore, supra,* Justice Goldberg addressed himself to the problem raised in this case. He stated that

> . . . [a] claim of breach of the union's duty of fair representation cannot properly be treated as a claim of breach of the collective bargaining contract supporting an action under §301 (a). This is particularly apparent where, as here, "[n]o fraud is charged against the employer. . ."

He stated that this "does not mean that an individual employee is without a remedy for a union's breach of its duty of fair representation . . . [since] an individual employee has a right to a remedy against a union breaching its duty of fair representation . . ."

Justice Goldberg further stated that where the employer had not willfully participated in the union's breach of duty of fair representation, the courts should not convert a breach of the *union's* duty to individual employees into a breach of the collective bargaining agreement between the employer and the union. He concluded that

> [i]n safeguarding the individual against the misconduct of the bargaining agent, we must recognize that the employer's interests are inevitably involved whenever the labor contract is set aside in order to vindicate the individual's right against the union. The employer's interest should not be lightly denied where there are other remedies available to insure that a union will respect the rights of its constituents.

This is where Anchor Motor Freight stands in the present case.

IV. Anchor's Vindication, Contractually, Administratively and Judicially, Bars Petitioners' Claim Against Anchor.

Anchor's discharge of the petitioners has been reviewed and adjudicated on seven distinct instances, each of which on its own should be sufficient to conclude the

process and avoid a multiplicity of actions arising out of the same "claims."

1. Anchor was vindicated in the grievance committee decision (A. 190-198).

2. Anchor was vindicated when the grievance committee refused to rehear based on "new evidence." (A. 210-212).

3. Anchor was vindicated when the petitioners sought relief from the National Labor Relations Board (A. 269-270).

4. Anchor was vindicated when the general counsel denied an appeal from the Regional Director's refusal to issue a complaint (A. 271-272).

5. Anchor was vindicated when the general counsel refused to reconsider based on "newly discovered evidence." (A. 273-274).

6. Anchor was vindicated by the granting of summary judgment in favor of Anchor by the United States District Court.

7. Anchor was vindicated by the affirmance of the summary judgment by the United States Court of Appeals for the Sixth Circuit.

Inasmuch as Anchor's conduct has been reviewed contractually, administratively and judicially on seven distinct occasions and each time Anchor has been found to be free from fault it is not within the purview of an appeal to this Court to "undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Mfg. Co. v. Linde Co.*, 336 U.S. 271, 275 (1949). No such showing appears here.

V. Courts Should Not Review the Merits of Arbitration Decisions, Especially Where a Failure to Represent Does Not Affect the Fairness of the Arbitration Process and Where There Is No Evidence That It Would Have Made a Difference in the Outcome of the Proceeding.

In *Humphrey v. Moore, supra,* this Court recognized that something more than mere unfair representation is required before a joint committee decision can be overturned. In that case the Court stated that the plaintiffs have not proved their case, in that they "have not suggested what they could have added to the hearing by way of facts or theory if they had been differently represented." The Court agreed with the trial court's finding that it would be "idle speculation to assume that the result would have been different had the matter been presented differently." 375 U.S. at 351. Implicit in this holding is the concept of harmless error, i.e., that in order to overturn an arbitration award the petitioners must demonstrate not only that the union breached its duty of fair representation, but also that but for the union's breach the result of the arbitration would have been different. Any breach of the duty to represent which is not of sufficient gravity to have affected the arbitrator's decision cannot be said to constitute adequate justification to warrant upsetting the finality of the award. It simply has not affected the overall fairness of the proceeding.

The petitioners in this case have alleged that the union breached its duty of fair representation when it refused to go to Batavia, New York, to investigate and when it told the petitioners that it is unnecessary for them to conduct their own investigation. It is evident on the record that the outcome of the arbitration was not affected by this "breach." The facts of this case indicate that even if the union had sent an investigator to Batavia no exculpatory evidence

would have been unearthed before the time of the Joint Committee hearings. The record shows that after the committee first upheld the discharges the petitioners hired an attorney who traveled to Batavia to investigate on their behalf (R. 48). Although the attorney was able to secure an affidavit from the motel owner, Repicci (which the committee considered and concluded was not "new evidence"), he did not obtain an affidavit from the room clerk, Pagano. If the petitioners were unable to convince Pagano to change his story when they did investigate, how can it be claimed that the union, by conducting its own investigation, would have been able to accomplish more than their attorney? How can the union's failure to investigate prevent the evidence of Pagano's inconsistent statement from reaching the committee, when Pagano would make no such statement at that time? Even if it is assumed, arguendo, that a breach of duty occurred, it was certainly a harmless breach, as subsequent events show that investigatory efforts would have been futile.

The question presented in petitioner's brief (page 4) is not borne out by the facts nor is it even suggested by the record that the "union breached its duty of fair representation in processing their grievance so as to deprive them and the grievance committee of overwhelming evidence of their innocence of the alleged dishonesty for which they were discharged."

An arbitration award should not be upset every time a breach of representation is shown since such breach is not of sufficient consequence to warrant undercutting the award. Often a union may act arbitrarily toward an employee but not affect the outcome. To hold otherwise would give employees unlimited retrials. All union conduct would be scrutinized to determine whether there was bias; every smirk or smile of a union agent would lend itself to a jury question; withholding of evidence, for any

reason, would be grounds for a rematch. The inherent evils are obvious.

The record does not reveal that the award would have been otherwise even if it were required that before petitioners can attack the arbitral award on the basis of being unfairly represented that they "must prove that but for the inadequacy of the representation by the union, the discharge would not have been sustained by the arbitration board." *Rodriguez v. Teamsters Local 679, Cannery Warehousemen, Food Processers, Drivers and Helpers*, 68 LC ¶12,815 (Calif. Superior Court, Santa Clara County, No. 261393, May 30, 1972). Before a suit will lie against an employer the arbitrator's decision must be overthrown, "a result not easily achieved. . . ." A principle of res judicata applies. See *Davidson v. International U.U.A., A. & A.I.W., Local No. 1189*, 332 F. Supp. 375 (D. N.J. 1971).

The facts of this case demonstrate that petitioners were given a fair hearing in front of the Joint Grievance Committee—a hearing at which the very issue they are now trying to again raise, the credibility of the motel clerk, was thoroughly considered. The petitioners, as well as their union representative, presented this issue to the panel. Although they lost at arbitration, the proceedings were, by their own admissions, convincingly fair, and therefore the award should be considered final. Courts are concerned with the fundamental fairness of the arbitration process. *Amerada Hess Corp. v. Local 22026*, 87 L.R.R.M. 2698 (D.C. N.J. 1974). A different conclusion should not result merely because of a breach of the duty of fair representation.

Even the National Labor Relations Board is now giving "full effect to arbitration awards dealing with discipline or discharge cases . . . except when unusual circumstances are shown which demonstrate that there were bona fide reasons, other then a mere desire on the part of one party

to try the same set of facts before two forums, which caused the failure to introduce such evidence at the arbitration proceeding." See *Electronic Reproduction Service Corp.*, 213 N.L.R.B. No 110, 87 L.R.R.M. 1211 (1974).

So long as the employee was present and presented his case courts are not disposed to substitute their judgment for that of the arbitrator. If the proceedings are otherwise fair there has been no denial of due process. If there has been a full hearing and the award is not tainted by fraud or corruption and the arbitrator reached an honest judgment on the record the award must stand. *Sharpe v. Carolina Freight Carriers Corp.*, 377 F. Supp. 528 (D.C. Pa. 1972), *Rossi v. TWA*, 350 F. Supp. 1263 (D.C. Calif. 1972).

Not even a court of law would find it necessary to retry a case on the method of the presentation of the evidence. The award of an arbitration committee should not be treated otherwise. It has been held that "the most advantageous manner of presentation of . . . evidence by a party is not a concern of the [trier of facts]." See *Tanton v. Zubkowicz* (1972), 43 Ohio App. 2d 1 (reported July 28, 1975).

VI. A Recantation by a Witness, More Than One Year After the Arbitral Award, Does Not Abrogate the Award.

An attempt to vitiate the arbitral award on the basis of a second inconsistent statement of one of the witnesses was reviewed by the U.S. Court of Appeals for the District of Columbia Circuit in *Washington-Baltimore Newspaper Guild, Local 35 v. The Washington Post Company*, 442 F.2d 1234 (D.C. Cir. 1971), where a witness failed to testify in an arbitration proceeding and subsequently agreed to testify. The Court held that to allow "a rematch

before the arbitrator, merely because a witness who refused to enter the original contest has now decided to participate, would be not only to give the Guild more than the benefit of its bargain in this case, but would undercut the finality and therefore the entire usefulness of an arbitration as an expeditious and generally fair method of *settling* disputes." In quoting the district court judge the appellate court restated that unless the "parties are bound by the records made before the arbitrators, the piecemeal or staggered submission of evidence would be likely to erode the effectiveness of arbitration as a speedy and efficient forum for resolving labor disputes." The same court went on to say that even if the arbitrator had made errors of fact and law the award would not be vacated unless it "compels the violation of law or conduct contrary to accepted public policy." No such violation is compelled by this award.

An arbitration award would have no finality if the parties could attack it whenever they found "new evidence."

In another "newly discovered evidence" case, *Bridgeport Rolling Mills Co. v. Brown*, 314 F.2d 885 (2nd Cir. 1963), *cert. denied*, 375 U.S. 821 (1963), an employer moved to vacate an arbitration award which ordered him to reinstate an employee who was discharged for suspicion of theft. The arbitrator had found that the employer's allegations of theft amounted to no more than rumor and gossip. Afterwards, the employer uncovered evidence which "conclusively established" the employee's complicity and alleged that the arbitration award, being based on the employee's perjurious testimony, was essentially procured by fraud. The Second Circuit flatly refused to vacate the award, holding that "the parties, having agreed to an arbitration of their differences, are

bound by the award made upon the testimony before the arbitrator."

The courts in *Newspaper Guild* and *Bridgeport Rolling Mills* recognized that the concept of finality would be eroded if an arbitration award could be vacated every time new evidence was discovered. Finality would similarly be undermined if this result could be avoided with the back door argument that a breach of fair representation has occurred.

If we were to assume that Pagano perjured himself by his sworn statement in the arbitration proceeding this would not be sufficient to set aside the award in the absence of fraud or misconduct in the *procurement* of the perjured testimony. *Atchison, Topeka and Santa Fe Railway Co. v. Barrett*, 246 F.2d 846 (9th Cir. 1957). Witness Pagano readily admits that he "did this all on [his] own." (A. 61).

In *Kirschner v. West Company*, 247 F. Supp. 550 (E.D. Pa. 1965), quoting Judge Augustus Hand with respect to an allegation of perjury:

> . . . Since it necessarily raises issues of credibility which have already been before the arbitrators once, the party relying on it must first show that he could not have discovered it during the arbitration, else he should have invoked it as a defense at that time. *Karppinen v. Karl Keifer Mach. Co.*, 187 F.2d 32, 35 (2d Cir. 1951). (Cited at p. 553).

This is precisely the current case. The issues were raised before the arbitrator, the parties had ample time to make the necessary discovery of the true facts, and in fact did cause an investigation on their own to be made.

Trial court judgments may be opened up when important evidence is later discovered, but the motion for a new trial on that basis must be made within one year of the date of judgment. Fed. R. Civ. P. 60. Traditionally

the courts, in respecting the crucial need for finality in the industrial setting, have refused to alter arbitration awards on the basis of newly discovered evidence. Hence, petitioners, who discover one witness who reverses himself more than one year after the committee sustained their discharges, should be barred from using that evidence to open up the committee's award, particularly where there is other evidence to sustain it. The issue of credibility is exclusively within the domain of the trier of fact. In short, petitioners would not have been permitted to evade the finality of a trial court's judgment by producing Pagano's statement more than one year later. An award by a joint committee should be entitled to the same degree of finality, particularly when the so-called "new evidence" does not create any *new issues*.

VII. A Decision by a Joint Grievance Committee Is Accorded the Same Degree of Finality As Any Other Method of Arbitration.

"Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement." 29 U.S.C. 173(d). The parties had established an agreed upon procedure for resolving disputes (A. 218 et seq.) and it was employed in this case.

Petitioners contend that Joint Committee procedures are so inherently susceptible of corruption that they are deserving of only a minimal standard of finality. They claim that under such procedures it is questionable whether the decision makers can act with any impartiality.

Noticeably absent from the petitioners' allegation of inherent corruption is any mention of collusion, partiality, or fraud in the instant case. In fact, the record in this

case reveals that during the arbitral hearing the petitioners were asked by the committee whether they felt they had been given a fair hearing. They acknowledged that they were satisfied (R. 140).

The committee in the instant case was comprised of an equal number of employer and union representatives. The committee members were not connected with either Anchor Motor Freight or Local 377.

The record does not reveal or suggest any evidence of fraud, bias, collusion, partiality or "horse trading" involving the committee. The petitioners are attempting to raise this question for the very first time in this case before this Court. The record is entirely devoid of evidence of any wrongdoing by the committee. This argument is procedurely and factually inappropriate in this case at this time.

This Court has already explicitly held on two occasions that decisions by a Joint Grievance Committee are to be given the same degree of finality as those by an arbitrator. *General Drivers, Local 89 v. Riss & Co. and Humphrey v. Moore, supra.* The underlying policy behind these decisions, as set forth in *General Drivers, Local 89 v. Riss & Co.*, is that the parties to a collective bargaining agreement should be able to agree on the methods they wish to utilize in definitively settling grievances. This policy is rooted in congressional declaration that the desirable method for final settlement of grievance disputes is in the manner agreed upon by the parties. 29 U.S.C. §173(d).

Likewise, in numerous cases the lower courts have repeatedly treated grievance committee decisions just as they do findings by arbitrators. No cases were found holding otherwise.

Similarly, the NLRB has not questioned the fairness of joint committee procedures. Just as with arbitration awards, the Labor Board has chosen to honor the findings of joint grievance committees. *Denver-Chicago Trucking*

Co., 132 N.L.R.B. No. 123 (1961); *Modern Motor Express*, 149 N.L.R.B. No. 147 (1964). Both of these decisions recognize the policy in favor of permitting the parties to a collective bargaining agreement to devise the machinery for the amicable resolution of their disputes, as long as there is no evidence shown of unfairness, irregularity, or collusion

Unlike outside arbitrators, persons sitting on the Joint Committee are very familiar with the operation of the industry and therefore can dispense a more knowledgeable, and therefore a more fair and more efficient brand of justice. Moreover, because the representatives sitting on the Joint Committee are not compensated, the system, besides being both effective and fair is relatively inexpensive to operate. This attribute is advantageous to the individual employee because it increases the likelihood that his union will pursue grievances to the final step.

At no time did any party express an objection to the manner in which the committee was constituted. Nowhere in the record is there even a suggestion that the committee was biased in any way. The petitioners did not allege any kind of taint in the grievance proceedings. Their only complaint was that the union had failed to properly represent them and that the discharge was wrongful, notwithstanding the committee decision. The joint grievance committee was never attacked in any way, until the petitioners' brief in the United States Supreme Court first suggesteed that joint arbitration committees are "inherently more susceptible to corruption than traditional arbitration." There is not a scintilla of evidence in this record to support these allegations. Furthermore, it is highly inappropriate for the petitioners to raise this new claim for the very first time at this stage of the proceedings. The issue of the integrity of the joint committee is entirely "extra-record" in this case.

At the joint committee hearing all defenses, including the petitioners' allegation that the motel clerk was the dishonest party, were presented to the committee. Among other things, the committee had to weigh the credibility of the written statements of the motel owner and clerk against the credibility of the oral testimony of the petitioners. By sustaining the discharges the committee resolved these questions in favor of Anchor. Its final and binding award was that the discharges be sustained.

At the time of this decision the evidence overwhelmingly indicated that the petitioners had been dishonest, as was recognized in the brief of the petitioners where they indicated that the panel's decision to uphold the discharges was "an unsurprising result in light of the evidence presented" (page 7).

It has been held "that the parties, having agreed to an arbitration of their differences, are bound by the arbitration award *made upon the testimony before the arbitrator.*" *Bridgeport Rolling Mills Company v. Brown*, 314 F.2d 885 (2d Cir. 1963), *cert. denied*, 375 U.S. 821 (1963) (emphasis added).

Summary judgment is the predominant judicial technique for sustaining arbitration awards, including joint grievance committee awards.

This Court has often said that the judiciary should not review the merits of a dispute which has been resolved pursuant to a labor agreement (*Steelworkers Trilogy*). The Court has examined the situation where the employee had been deprived of his right to exhaust his grievance procedures by the union's unfair representation (*Vaca v. Sipes, supra*). In this case, however, the Court has the opportunity to examine the equities involved when an employer in good faith, takes action which it deems right under the collective bargaining agreement, where the grievance procedures have been exhausted, and where

the employer's action has been sustained and a rational basis exists for the conclusion of the grievance committee.

CONCLUSION

For all of the foregoing reasons, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1025

BURTICE A. HINES, *et al.*, *Petitioners,*

v.

ANCHOR MOTOR FREIGHT, INC., *et al.*, *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR RESPONDENT INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

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BRIEF FOR RESPONDENT INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

STATEMENT

A. The Limited Scope of This Brief.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereafter "International") was named as a defendant in this case together with its affiliate, Local 377. The District Court granted summary judgment in favor of the International and the Court of Appeals affirmed that part of the judgment, since "there was no genuine issue as to a material fact about the conduct of the In-

ternational Union." (Pet. App. A-15.) Petitioners sought review of the judgment in favor of the International, but this Court's limited grant of certiorari took the issue of the International's responsibility out of the case. Accordingly, while the International remains a party respondent, the only controversy still before this Court is that between petitioners and the employer, respondent Anchor. The issue between those parties is the effect on the finality of the Joint Arbitration Committee under the National Master Automobile Transporters Agreement of the Court of Appeals' conclusion that plaintiffs are entitled to go to trial on their claim that the local union breached its duty of fair representation in processing their grievance before that Committee.

We would not have filed a brief in this Court were it not for the fact that petitioners have sought to inject another entirely distinct issue into the case—the claim that because the Joint Committee contained no neutral members it is not entitled to the finality accorded "traditional arbitration." (See Pet. Br. 32-33.) [1] Petitioners did not raise this issue in the District Court or in the Court of Appeals, and, it is therefore not properly here. (See *e.g., Adickes* v. *S. H. Kress & Co.,* 398 U.S. 144, 147, n.2, and cases cited *id.*) Additionally, their argument is not fairly encompassed in, and indeed, is inconsistent with, their basic claim, as phrased in the Question Presented, "that their union breached its duty of fair representation in processing their grievance so as to deprive them *and the grievance committee* of overwhelming evidence of their innocence" (Pet.

[1] The brief *amici curiae,* which is tendered herein by PROD, Inc., *et al.,* is limited to the same issue, which it addresses at great length.

Br. 4, emphasis added.) In other words, petitioners asked this Court to decide their rights on the assumption that the Joint Committee was imposed upon and would have rendered an award in their favor but for the local union's failure to represent them fairly. Particularly since the Court took pains to limit its grant of certiorari, this Court's Rule 23.1(c) also forecloses petitioners from raising their challenge to the Joint Committee precedure. See, e.g., *F. D. Rich Co.* v. *Industrial Lumber Co.,* 417 U.S. 116, 121, n. 6.

Only because we cannot be *certain* that the Court will decline to consider that issue in this case, do we feel constrained to file this brief to defend the finality of the Joint Committee method of resolving disputes under agreements which have served employees, employers and unions in the trucking industry well for over 30 years.

B. The Grievance Procedure Under This Agreement.

Because of the limited scope of this brief, the only facts that need be set forth herein are the terms of the agreement relating to the grievance procedure. Article 32 of the National Master Automobile Transporters Agreement which covered these employees and under which this suit was brought prohibits discharge of employees "without just cause" (A. 170), and entitles employees to one written warning notice of any complaint "except that no warning notice need be given to an employee before he is discharged if the cause of such discharge is dishonesty * * *." (*Id.*) Article 32 provides further: "Discharge must be by proper written notice to the employee and the Union affected. The Local Union may request a hearing as to an employee's discharge, suspension or any dis-

ciplinary action." (*Id.*) The hearing procedure is that set forth in Article 7 of the National Master Automobile Transporters Agreement (A. 226-233) whose principal terms we shall now summarize.

Article 7, § 1 prohibits unions and employers from engaging in strikes, lockouts and legal proceedings "without first using all possible means of a settlement, as provided for in this Agreement, of any controversy which might arise." (A. 226) Section 2 describes the grievance procedure at the Local level. Section 3 establishes national and area arbitration committees each of which "consists of an equal number of designated representatives of the employers and the unions who are parties to this agreement." (A. 228) Section 4 provides that the National Committee shall, *inter alia,* settle disputes which are deadlocked by an Area Committee, that is, if an Area Committee is unable to resolve the dispute. Section 6 provides that if there is a deadlock at the National Committee level the dispute will be submitted to a Board of Arbitration consisting of three members, a union representative, an employer representative and "a third disinterested arbitrator" whom they appoint. Of major importance is § 7 which provides:

> "(c) Any decision of any of the Joint Arbitration Committees referred to above, shall be final and conclusive and binding upon the Employer and the Union, and the employees involved." (A. 232)

SUMMARY OF ARGUMENT

Petitioner's contention that the award of a Joint Committee consisting of equal numbers of union and employee representatives and no neutral should not be given the same respect as the awards of neutral arbitrators, is foreclosed by the decisions of this Court. In *Drivers Union* v. *Riss & Co.,* 372 U.S. 517, this Court held that the award of such a committee was enforceable under § 301 of the Labor Management Relations Act of 1947 if it is final and binding under the collective bargaining agreement; and further that if the award is "thus enforceable, it is of course not open to the courts to reweigh the merits of the grievance." *Id.* at 519. In *Humphrey* v. *Moore,* 375 U.S. 335, this Court, following *Riss,* enforced such an award and stated: "The decision of the committee, reached after proceedings adequate under the agreement, is final and binding upon the parties, just as the contract says it is." *Id.* at 351. These decisions implement the congressional policy declared in § 203(d) of the Act that "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement."

Additionally, any rule which would deny finality to all Joint Committee awards or (as *amici* PROD et al. urge) to those awards which are adverse to employees, would defeat the legitimate expectations of the parties, and would inevitably affect the substantive terms of future agreements. For, contrary to the assumption of those who would overturn *Vaca* v. *Sipes,* 386 U.S. 171, the substantive terms of collective bargaining agreements cannot be treated as given, but rather are

negotiated with full consciousness of whether the application of those standards will be a matter for the grievance procedure, or for courts and juries.

The short of the matter is, that petitioners and *PROD* invite this Court to exceed its proper role under § 301 of the Act which, as stated in *Textile Workers* v. *Lincoln Mills,* 353 U.S. 448, 456, and reaffirmed in *Howard Johnson* v. *Hotel Employees,* 417 U.S. 249, 255, is to "fashion federal law of collective bargaining from the policy of our national labor laws". That policy, declared in § 203(d), is to respect the method of dispute settlement chosen by the parties and not to impose a different system from the outside. Not only is the insistence that Joint Committees' awards should be given a status inferior to those of neutral arbitrators fundamentally unsound, it ignores the inescapable truth that every method of adjudication has its own unique advantages and disadvantages, and attributes to Joint Committees wholly chimerical infirmities.

ARGUMENT

A. Petitioners' belated contention that awards of the Joint Arbitration Committee are entitled to a lesser standard of finality "than traditional arbitration" [2] is foreclosed by this Court's unanimous decision in *Drivers' Union* v. *Riss & Co.,* 372 U.S. 517. In *Riss,* the agreement provided for "final" determination of grievances by majority vote of a Joint Committee of union and employer representatives and no "neutral" member. The Joint Committee had sustained a grievance against the discharge of six employers. The employer refused to comply with the award, and the employees and their union sued to enforce it. In affirming dismissal of their complaint the Sixth Circuit held, *inter alia,* that because the award of such a committee "was not an arbitration award," "[r]ecent pronouncements of the Supreme Court with reference to arbitration [the *Steelworkers* trilogy] are not controlling here" (298 F.2d 341, 342.) This Court unanimously reversed:

> "If, as petitioners allege, the award of the Joint Area Cartage Committee is under the collective bargaining agreement final and binding, the District Court has jurisdiction under § 301 to enforce it, notwithstanding our *Westinghouse* decision. See *Textile Workers* v. *Lincoln Mills,* 353 U.S. 448, 456, n. 6; *United Steelworkers* v. *Pullman-Standard Car Mfg. Co.,* 241 F.2d 547, 551-552 (C.A. 3d Cir. 1957). Plainly, this allegation cannot be rejected on the basis merely of what the present record shows. It is not enough that the word 'arbitration' does not appear in the collective bargaining agreement, for we have held that the policy of the Labor Act 'can be effectuated only

[2] Pet. Br. 32, initial capitals omitted.

> if the means chosen by the parties for the settlement of their differences under a collective bargaining agreement is given full play.' *United Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 566; cf. *Retail Clerks* v. *Lion Dry Goods, Inc.*, 369 U.S. 17. Thus, if the award at bar is the parties' chosen instrument for the definitive settlement of grievances under the Agreement, it is enforceable under § 301. And if the Joint Area Cartage Committee's award is thus enforceable, it is of course not open to the courts to reweigh the merits of the grievance. *American Mfg. Co., supra,* at 567-568." (372 U.S. at 519.)

Riss was followed in *Humphrey* v. *Moore,* 375 U.S. 335, which involved a challenge by a group of employees against an award on a seniority dispute by a Joint Committee established under a predecessor of the National Automobile Transporters Agreement involved herein. This Court sustained the Joint Committee's decision:

> "Neither the parties nor the Joint Committee exceeded their power under the contract and there was no fraud or breach of duty by the exclusive bargaining agent. The decision of the committee, reached after proceedings adequate under the agreement, is final and binding upon the parties, just as the contract says it is. *Drivers Union* v. *Riss & Co.,* 372 U.S. 517." (375 U.S. at 351.)

Petitioners acknowledge the existence of *Riss* but seek to deflect its authority by quoting a passage from *Glover* v. *St. Louis-S.F.R. Co.,* 393 U.S. 324, 330-331 (see Pet. Br. 33.) We of course accept the holding of *Glover* that employees who can establish that their effort to pursue contractual remedies would be futile because of the misconduct of the union, the employer, or both, may sue directly in court to enforce their rights

under the contract. *Glover* merely reaffirmed, and applied to the Railway Labor Act, the teachings of *Vaca* v. *Sipes,* 386 U.S. 171, quoted in *Glover,* 393 U.S. at 330.

It follows from *Vaca* that if petitioners can, on trial, prove that but for their representatives' misconduct they would have been able to present compelling evidence of their innocence to the Joint Committee, the award of that Committee would be fatally infected and therefore not entitled to be treated as final by the courts. But neither *Vaca* nor *Glover* gives the slightest comfort to petitioners' claim that the Joint Committee award should not be given final and binding effect even if they cannot prove their charge that the union breached its duty to represent them fairly. On that issue *Riss* and *Humphrey* (where, of course, an unfair representation claim was raised and rejected) are decisive against petitioners.

PROD, on the other hand, accepts *Riss'* "holding as it applies to suits by either of the *parties* to the collective bargaining agreement to obtain compliance by the other with a joint committee award favorable to it" but believes "that routine extension of that holding to require judicial deference to joint committee decisions upholding alleged employer breach of contract claims by discharged employees is improper." (PROD Br. 6, emphasis added).

There is a strong element of paradox in the argument that employees are not "parties" to collective bargaining agreements, and *therefore* should be given freer access to judicial enforcement of contracts than unions and employers. Passing that, PROD's argument is untenable for two reasons. *First,* the proffered distinction between employee and union claims held sway

briefly under *Association of Salaried Westinghouse Employees* v. *Westinghouse Electric Corp.*, 348 U.S. 437, but proved unworkable in practice and unsound in principle. It was of course expressly disapproved in *Smith* v. *Evening News,* 371 U.S. 195, 198-201, and again in *Riss* itself, 372 U.S. at 520. And if PROD is arguing that employee discharge cases should be treated differently than other disputes arising under a collective bargaining agreement, they are embracing a view which has been abandoned under the Railway Labor Act where it once prevailed (see *Andrews* v. *Louisville & Nashville R. Co.,* 406 U.S. 320, overruling *Moore* v. *Illinois Central R. Co.,* 312 U.S. 630), and which has never been accepted under the National Labor Relations Act (see *Republic Steel Corp.* v. *Maddox,* 379 U.S. 650).

Second, and more fundamentally, the agreement under which this suit was brought provides that an award of the Joint Committee "shall be final and conclusive and binding upon the Employer and the Union, and the employees involved" (A. 232). Thus, PROD's proposal that an award favorable to employers be given less finality than an award adverse to employers, would be a grotesque distortion of the "method agreed upon by the parties" (§ 203(d)). The one-way finality which PROD urges would be fundamentally unfair and would defeat the parties' legitimate expectations. Inevitably it would also have adverse effects on future agreements, by inhibiting the willingness of employers to agree to substantive terms under which their unfettered discretion over employment conditions would be subject to review under a grievance procedure. As Professor Feller has written:

> "Under our system there is no mandate that such rules be contained in collective agreements. The parties must agree. Their willingness to do so is, I believe, dependent in large measure on their ability to establish their own adjudicative machinery, with its own remedial limitations. The specification of a rule in a collective agreement is always subject to the hazard that its application in unforeseen circumstances or its interpretation in unforeseen ways will bring unintended consequences. That hazard is limited to the extent that the parties themselves control the procedure in which disputed questions of interpretation and application are determined and the remedies which can be provided. I believe, in short, that the existence of the very rules upon which many individual claims are based is itself dependent upon the absence of an individual right to obtain adjudication of claims of their violation in a forum foreign to the system.[3]

---

[3] Feller, *A General Theory of the Collective Bargaining Agreement,* 61 Calif. L. Rev. 663, 854.

In view of the point made by petitioners, PROD, and some of the commentators on whom they rely, that individual rights receive insufficient protection under *Vaca* v. *Sipes,* it is well to keep in mind the two paragraphs of Professor Feller's article which immediately precede the passage quoted in the text:

> "This leads directly to consideration of the second and more significant issue: the soundness of *Vaca's* basic holding rejecting the right of an individual employee to bring suit on a collective agreement in the absence of a claim of breach of union duty. That rejection, which is consistent with the theory of the agreement here advanced but inconsistent with the traditional analysis, has been much criticized. The ground set forth by the Court—that the consequence of permitting individual suit would be to overburden and undercut the grievance procedure—I believe to be sound. But there is another and equally important basis for the Court's conclusion; the effect of a contrary view on the entire structure of rules embodied in the typical American collective agreement.
>
> Critics of *Vaca* too often assume the substantive rules embodied in a collective agreement as a given and concern themselves solely with the injustices found in their nonenforce-

We can put the matter in concrete terms in the context of the present case. As this Court has said, "the very concept of 'wrongful discharge' implies some sort of statutory or contractual standard that modifies the traditional common-law rule that a contract of employment is terminable by either party at will" (*Andrews* v. *Louisville & Nashville R. Co.*, 406 U.S. 320, 325). If employers were to learn that the Joint Arbitration Committee decisions in their favor are subject to review on the merits before a court or a jury, they would insist upon substantive standards which would to the fullest extent possible preserve their unfettered discretion to discharge. Even if the union could successfully resist an employer demand to be allowed to discharge at will, employers might well find it economically essential to insist to impasse that they retain their right to determine the facts with respect to at least some serious infractions for which discharge is permissible.

The upshot is that denying finality to awards of a Joint Committee which is authorized to make final and binding awards under a collective bargaining agreement would defeat the Congressional policy, stated in § 203(d) of the Act:

> "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement."

It is, of course, this provision which sets forth "the policy of the Act" implemented in *Steelworkers* v. *American Mfg. Co.*, 363 U.S. at 566, quoted in *Riss*, 372 U.S. at 519, see p. 7, *supra*. Accordingly, to give second-class treatment to the awards of the Joint Grievance Committee requires not only that *Riss* and *Humphrey* be overruled, but that the statutory policy which those decisions vindicate be nullified.

B. The heart of the matter is that in calling upon this Court to scuttle the trucking industry Joint Grievance Committee procedure, petitioners and PROD invite it to discharge a function which it has properly eschewed in suits under § 301. As this Court recently said in *Howard Johnson* v. *Hotel Employees*, 417 U.S. 249, 255:

> "[*Textile Workers* v.] *Lincoln Mills* [353 U.S. 448] did not envision any free-wheeling inquiry into what the federal courts might find to be the most desirable rule, irrespective of congressional pronouncements. Rather, *Lincoln Mills* makes clear that this federal common law must be 'fashion[ed] from the policy of our national labor laws.' *Id.*, at 456."

The policy which, as we have emphasized, governs the present question is that declared in § 203(d) which favors the grievance adjustment method "agreed upon

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ment. But those rules are not given. They are the product of a consensual arrangement. *American industrial society relies to an extraordinary degree on the voluntarily developed systems of law embodied in collective agreements to provide the protections for employees which are provided in other societies by public law.* There are enormous advantages to such a system. Public law can provide certain elementary protections, such as the right to be free from discharge except for just cause, but complex systems of seniority, of rules governing scheduling and the allocation of overtime, of job evaluation and classification, and the myriad other matters which are made subject to a rule of law in the modern American collective agreement cannot be imposed by broadly applicable public law. They must be developed in the light of the particular needs and circumstances of individual industries, companies and even plants or departments." *Id.* at 853-854, footnote omitted, emphasis added.

by the parties" rather than one imposed upon them from the outside. This policy leaves no room for the "free-wheeling inquiry into what the federal courts might find to be the most desirable" method which petitioners and PROD urge this Court to undertake. Further, it would be impossible to respond fully to the criticisms which their briefs level against the Joint Grievance Committee procedure without joining them in their foray beyond the evidentiary record, or the legitimate bounds of judicial notice. However, their strident challenges cannot, in fairness to ourselves and to the Court, go wholly unanswered.

1. Petitioners challenge the fairness of the Joint Committees solely because, they assert, the absence of a neutral "greatly magnifies the risk of collusion and 'horse trading' " (Pet. Br. 32), that is, the possibility that a grievance would be decided not on the merits but in exchange for some collateral advantage. While petitioners cite one commentator who opines that the Joint Committee procedure is more susceptible to this practice than forms of arbitration which involve a neutral, neither he nor petitioners point to any statistical evidence to support that comparison, and even more importantly, even he does not assert that "horse trading" is a common phenomenon on Joint Committees. Above all, petitioners make no claim that the Joint Committee in their case did not decide the case on the merits as they were presented.

What petitioners' contention comes down to, therefore, is that the Joint Committee method is susceptible to abuse. They either do not realize, or choose to ignore, that the system which petitioners refer to as "traditional arbitration" has been severely criticized by some commentators, including Judge Paul R. Hays, in part because a neutral will often make efforts to please both sides in order that he will be selected by

unions and employers in the future.[4] Judge Hays also points out that the presence of a neutral arbitrator may lead to a "rigged award", where the union takes the case to arbitration but privately tells the arbitrator that it does not wish to win the case.[5] We believe that Judge Hays' criticisms are considerably overdrawn, perhaps because the voice crying in the desert must be shrill in order to be heard. Nevertheless, it is inescapable that there *are* some inherent institutional problems with adjudication by a professional neutral.[6] But

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[4] Hays, *Labor Arbitration—A Dissenting View* (1966), p. 61.

[5] Judge Hays writes:

> "In the category of grievances, we may take as an example a situation in which the employer agrees, at the instance of the union, to discharge a leader of a faction within the union who has been 'making trouble' for the union leaders, but whose discharge will be unpopular and, if effected with the consent of the union, might strengthen the faction. The employer discharges the man on a trumped-up charge, say incompetence. The union demands arbitration and presents its case to the arbitrator at a hearing, having in the meantime informed the arbitrator that it does not want to win the case. The arbitrator then upholds the discharge. As we have seen, the National Labor Relations Board will ordinarily accept the result of the arbitration. For contrast we may take the case of an employee discharged by the employer for stealing. The union agrees with the employer that the evidence shows the employee is guilty, but it insists on going through the form of an arbitration hearing because of the employee's popularity. Again the arbitrator is told that the union does not desire to win." *Id.* at 64-65.

[6] The Joint Committee procedure avoids the expense of a professional arbitrator and assures the parties that the case will be decided by persons who have even greater familiarity with the trucking industry and the particular agreement which governs the grievance than any arbitrator could achieve. Such union-employer committees (with no neutral), are by no means unique to the trucking industry. See e.g., *Parks* v. *International Brotherhood of Electrical Wkrs.*, 314 F.2d 886, 894 (C.A. 4), describing the arrangement in the electrical industry:

> "With the encouragement of the two national organizations, IBEW and NECA, most collective bargaining agree-

this by no means leads to the conclusion that the *Steelworkers* trilogy was wrong with respect to the form of arbitration involved in those cases. Courts too are fallible. Cf. Frankfurter & Greene, *The Labor Injunction* (1932), *passim*. Each method of adjudication has advantages and disadvantages unique to it, and while each may in a given case result in injustice to an employee,[7] all give greater protection to the indi-

ments between IBEW locals and NECA chapters contain some form of Council clause. There are variations, but generally clauses require submission to the Council for binding decision of all disputes arising during the term of the agreement and proposed changes at the end of any contract year when the parties fail to arrive at an agreement locally."

[7] See *e.g., Edwards* v. *St. Louis-San Francisco Railroad Co.*, 361 F.2d 946 (C.A. 7). That case involved an order by a Railroad Adjustment Board, where the neutral and employer members sustained (over the union member's dissent) the discharge of an employee with 40 years' service on the charge that he had taken $5 from a passenger without giving her a receipt therefor. The employee was given no opportunity to cross-examine the passenger who accused him. The Court said:

> "This appellant was dismissed from his employment and deprived of his livelihood after forty years on the job on the sole basis of hearsay evidence. Moreover, when considered as a whole, the evidence adduced at the company hearing really indicated nothing more than the fact that a passenger charged a conductor with an act which the latter denied. What is particularly offensive is that the carrier not only elected to accept the charge of its hitherto unknown customer and reject the denial of its long-standing employee, but that it imposed the harshest of all available sanctions under circumstances which made it extremely difficult, if not impossible, for the accused to test the credibility of his accuser. Indeed, it is hard to imagine a situation in which a carrier could act with greater distrust of a veteran employee or greater disdain for the conventional notions of fair play and still meet its obligations under grievance procedures prescribed by a collective bargaining agreement."

Recognizing it to be a hard case, the Court nevertheless refused to review the order of the Railroad Adjustment Board because it had no statutory authority to do so.

vidual than the unilateral determination of an employer in the absence of a collective bargaining agreement. That they share the infirmity common to all human institutions is no warrant for denying any of them the finality to which they are entitled under the contracts which created them and by virtue of § 203(d), which Congress intended that they receive from the courts.[8]

2. PROD submits the following extravagant criticism of the Joint Grievance Committee procedure:[9]

> "The fact of the matter is that joint committees are structurally incapable of rendering impartial judgments on employee breach of contract claims due to the employer participation on those committees. Yet, the effect of the decision below will be to encourage employer efforts to rig decisions and will exonerate them from any future liability

[8] PROD objects that the Joint Committees do not write opinions, (PROD Br. 19). PROD appears to overlook that, "as this Court has recognized, '[a]rbitrators have no obligation to the court to give their reasons for an award.' *United Steelworkers of America* v. *Enterprise Wheel & Car Corp.*, 363 U.S. at 598." *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 58. The procedures of the Joint Committee do not differ from those of arbitration proceedings as described in *Alexander:* "Moreover, the factfinding process in arbitration usually is not equivalent to judicial factfinding. The record of the arbitration proceedings is not as complete; the usual rules of evidence do not apply; the rights and procedures common to civil trials, such as discovery, compulsory process, cross-examination, and testimony under oath, are often *severely limited or unavailable.*" (415 U.S. at 57-58).

[9] PROD addresses itself to the National Master Freight Agreement, which is not the agreement involved in this case. This agreement differs for example in that it does call for final and binding arbitration before a panel which includes a neutral rather than a strike as a culminating step. See Article 7, § 6, A. 231-232.

when they have procured a favorable decision." (PROD Br. 7)

And PROD finds it necessary to assault the integrity of employers in the trucking industry as a class:

> "In addition, it is standard practice that you vote in favor of your colleague's position or else he may not vote in favor of your position when you argue the next case before the committee on which he is sitting as a member. Thus, industry committee members will invariably close ranks and vote to uphold a colleague's discharge of an employee and the best the Union can do on his behalf is to deadlock the committee." (*Id.* 10)

Of course, PROD presents no evidence, record or otherwise, to justify its description of the "standard practice." It is unnecessary to look beyond *Riss* itself to see that the Joint Committees *do* sustain discharge grievances. It is an absurd notion that the unions have given up their right to strike over discharges for the dubious privilege of litigating in a forum in which they cannot win. To be sure, there is nothing in the record to show this fact; petitioners not having raised any objection to the Joint Committee procedure, there was no occasion to adduce evidence on this subject. But we can and do represent to the Court that employees prevail in a substantial proportion of grievances, including discharge cases.[10]

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[10] We believe that the views of outside commentators should be given little weight in evaluating effect to procedures established by the parties that must live with them. Yet it is instructive that the description of the Joint Committees by Mr. Azoff, an author whom petitioners and PROD quote extensively, belies PROD's charge that the system is stacked against the employees:

> "The most important facet of the joint committee is its method of operation, which stresses a relationship between union and labor panelists that is built around accommodation. The parties are not uncompromising adversaries who always support the positions of their respective constituents. If they were so shortsighted, each and every case would be deadlocked, and the entire joint committee system rendered useless. The parties' overriding desire is to create a viable system of effective contract administration. A series of deadlocked disputes would be equally disruptive to both management and labor. With its accompanying lost wages and productivity, a strike hurts the pocketbooks of both employer and employee. 'It is this administrative pragmatism that converts partisanship into a form of enlightened neutrality as both sides within the committee seek to achieve an acceptable common ground is a dispute.' Thus, an understanding of the premise upon which the joint committee operates reduces to absurdity the position that as a condition for court enforcement of an award, the committee members must unremittingly advocate the respective positions of the parties they represent. Ideally, committee members are not surrogates but are part of an independent board of governance of a plant or industry, which places institutional interest above all else. Indeed, it is the expertise, informed judgment, and desire to accommodate in order to achieve industrial peace brought to the committee by its union and management panelists, which makes the committee system unique. When operating in accordance with this ideal, the committee is truly 'the amalgam of the collective bargaining and arbitral process.'" (Azoff, *Joint Committees As An Alternative Form Of Arbitration Under The NLRA*, 47 Tul. L. Rev. 325, 365 (1973)), footnotes omitted.

3. With a single exception the Law Review commentaries on which petitioners and PROD rest their argument merit no reply.[11] The exception is Professor Feller's article "*A General Theory of the Collective Bargaining Agreement,*" 61 Calif. L. Rev. 663

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[11] One of these is a candid instance of special pleading, Tobias, *A Plea for the Wrongfully Discharged Employee Abandoned by His Union,* 41 U. Cin. L. Rev. 55 (1972). Mr. Tobias is identified as one who "has represented many plaintiffs in wrongful discharge-unfair representation cases" (*id.*). There is no evidence that the comments about the Joint Committee procedure under Teamsters contracts in the other articles cited to attack those procedures are based on any experience at all with them or reflect anything other than the personal prejudices of their authors.

(1973). This is not the occasion to deal in depth with Prof. Feller's imaginative, provocative and spacious discourse on the nature of the collective bargaining agreement. For present purposes it suffices to observe that by relying on that article, petitioners and PROD have done him the disservice of distorting his position by wresting it out of its context, and have done themselves an even greater disservice because in Prof. Feller's view, the determinations of Joint Arbitration Committees *would not be reviewable at all* unless the union has breached its duty of fair representation. For Prof. Feller's thesis is based on his theory (id. at 838) that this Court erred in *Humphrey* v. *Moore,* when it treated Joint Committee determinations as arbitration awards, rather than as agreements of the parties, as Mr. Justice Goldberg had urged in his concurring opinion, 375 U.S. at 351-359. And Prof. Feller's conclusion with respect to Joint Committee awards is the following (61 Calif. L. Rev. at 838):

> "Treating decisions by joint committees as settlements made in the grievance procedure rather than as arbitration awards has at least two consequences. First, a decision is not subject to even the limited review for action in excess of jurisdiction to which arbitration awards are subject under [*Steelworkers* v.] *Enterprise* [*Mfg. Co.,* 363 U.S. 593.] Second, insofar as an individual's claim is concerned, a decision of a joint committee that his grievance lacks merit should bind him just as much, but no more, than a decision reached at the third or fourth step of a grievance procedure that the grievance should be abandoned, *i.e.,* settled on the basis of the company's answer at that step."

The position espoused by Prof. Feller having been rejected in *Humphrey* v. *Moore,* we no longer press

it. Rather, we urge the Court if it reaches the issue at all, to adhere to its decisions in *Humphrey* and *Riss* and to give to Joint Committee awards that final and binding effect to which they are entitled under § 203(d), because such awards are "the parties' chosen instrument for the definitive settlement of grievances * * * " (*Riss,* 372 U.S. at 519).

CONCLUSION

For the reasons stated herein (pp. 1-4), petitioners' contentions respecting the finality to be accorded Joint Committee decisions, where those decisions are not affected by a lack of fair representation, are not properly before the Court. If, nevertheless, the Court determines to consider this subject it should reaffirm that ". . . it is of course not open to the courts to reweigh the merits of the grievance" which has been resolved by the Joint Committee. *Riss, supra* 372 U.S. at 519.

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No. 74-1025

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

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v.

ANCHOR MOTOR FREIGHT, INC., ET AL., *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF FOR RESPONDENT LOCAL UNION NO. 377

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COUNTERSTATEMENT OF THE CASE

1. Parties

Petitioners are truck drivers formerly employed by the Respondent, Anchor Motor Freight, who, while so employed, were members of Respondent Local 377. Respondents Anchor and Local 377 are parties to a collective bargaining agreement, negotiated on a nationwide basis, called the National Master Automobile Transporters Agreement (A. 226).

2. Relevant contract provisions.

Article 32 of the collective bargaining agreement prohibits discharge of employees "without just cause" (A. 170). Employees are entitled to one written warning notice of any complaint "except that no warning notice need be given to an employee before he is discharged if the cause of such discharge is dishonesty * * * ." (A. 170).

The procedures established by the contract to review protested discharges are outlined in Article 32 and Article 7 (A. 218-224). This procedure includes the use of joint arbitration committees, organized on a geographical or area basis, and a national joint arbitration committee for appeals from deadlocked cases (A. 221). The decisions of the committees are final and binding by specific agreement of the parties (A. 224):

> "[Art. 7, § 7](c) Any decision of any of the joint arbitration committees referred to above, shall be final and conclusive and binding upon the employer and the union and the employees involved."

These committees are referred to as joint committees because they consist of an equal number of employer and union representatives (Article 7, Section 3(b)) (A. 220).

The final step in this grievance procedure requires the parties to submit deadlocked cases to an impartial or neutral arbitrator. The contract specifically states that deadlocked grievances "shall" be submitted to a board of arbitration which includes a neutral member (A. 223).

3. Discharge decision

On June 5, 1967 the employer discharged eleven drivers for dishonesty (A. 120). The alleged dishonesty consisted of submitting false receipts for reimbursement of room rent. The drivers maintained their innocence. Agents of Local 377 undertook their defense and presented the grievance locally with management. When that failed to resolve the matter a formal hearing was held pursuant to the contract procedures.

4. The Arbitration hearings

The first hearing was held in Detroit on Wednesday, July 26, 1967 (Ex. 9, A. 190-193). All of the drivers were notified of the hearing and attended (A. 104). Prior to the hearings the drivers met with the union business agents and told them their version of the facts (A. 29). When they discussed the registration records and the receipts which had been made available to the union, the drivers asserted that they had no control over the amounts which the motel operator put on the card, and insisted that they paid the actual amount shown on the receipts for which they were reimbursed by the employer (A. 30, 73, 80). The union agents believed that the drivers were correct and that it was the motel owner that was in error (A. 44).

The first hearing before the Joint Arbitration Committee lasted over four hours (A. 76, 138, 140). The Committee deliberated two hours before making its decision (A. 141). At this hearing the employer presented the receipts and registration cards and the statements by both Repicci, the motel owner, and Pagano, the motel clerk. A union agent spoke on behalf of the men, and each of the men spoke on his own behalf (A. 32, 38, 47). After the decision sustaining the discharges was distributed, the drivers asked the union agents whether they should get a lawyer and the union told them that they might as well (A. 31).

Subsequently, an attorney hired by the drivers obtained an affidavit from Repicci, the motel owner. No second affidavit was ever obtained from Pagano, the motel clerk who had allegedly falsified the receipts. On the basis of Repicci's affidavit the local union requested and was granted a rehearing which was held on October 26, 1967 (A. 210). These rehearing proceedings took over two hours (A. 147-148). Most of

the men attended the second hearing (A. 48, 109). The rehearing was denied unanimously by the Joint Committee (Ex. 11, A. 210). The only new evidence that had been offered was the affidavit of Repicci (A. 82-83).

5. Other proceedings—the National Labor Relations Board

The drivers then filed a charge with the 8th Region of the National Labor Relations Board alleging that the discharges resulted from concerted activities previously engaged in by the employees, and that the employer acted in concert with officers of Local 377 (A. 152-155). A charge was also filed with the National Labor Relations Board against Local 377 for breach of the duty of fair representation. These charges were investigated and dismissed for insufficient evidence (A. 269). Upon appeal, this dismissal was affirmed by the General Counsel of the National Labor Relations Board. He specifically noted that the Union had obtained reinstatement of the drivers pending arbitration; had obtained a rehearing to present the additional evidence obtained by their attorney; and that the drivers were present at both hearings and were allowed to present their own defenses. He concluded, accordingly, that "insufficient basis existed for a finding that the union failed to represent them properly." (A. 271-272).

6. Court Proceedings

a. The U.S. District Court

Petitioners filed a complaint in the U.S. District Court alleging that the discharges were without just cause. Jurisdiction was predicated on § 301 of the Labor-Management Relations Act (29 U.S.C. § 185).

The complaint alleged that the decision of the Committee resulted in an injustice because: (a) the proceedings were devoid of due process in that the contractual grievance procedures were not followed; (b) no proper notice of hearing was given the plaintiffs; (c) the discharges were sustained without evidence of wrongdoing; (d) the Committee failed on application for a rehearing to consider evidence absolving them of any wrongdoing; and (e) that the defendants knowingly used false information to sustain the discharges (A. 5-6). These allegations were denied by all respondents (A. 8-16).

Extensive discovery procedures were conducted by the parties. All parties took depositions and exchanged documentary evidence. This discovery demonstrated, without disagreement by petitioners, that the parties had followed the contractual procedures; that petitioners received notice of the hearing and attended in person (A. 30, 32, 38, 47, 109); that evidence both documentary and testimonial, was produced at the hearing; that the Arbitration Committee heard and considered the evidence offered on rehearing (A. 146-148); and that no false evidence was used by Local 377 in the arbitration process (A. 32, 81).

Based upon the depositions and documents produced during the discovery proceedings, a motion for summary judgment was filed by each of the defendants. The district court granted summary judgment based on its finding that the arbitration award was final and that the petitioners had failed to show facts "comprising bad faith, arbitrariness, or perfunctoriness on the part of the Unions." (App. to Pet., p. 4).

b. The Court of Appeals

Petitioners appealed the order granting summary judgment to the Sixth Circuit Court of Appeals. The proceedings in that Court resulted in a decision affirming that part of the summary judgment dismissing the employer and the International Union as parties.

However, the court reversed the order granting summary judgment dismissing the case against the local union, stating that "A case where questions of good faith or fraud are at issue should not be summarily decided without the taking of testimony unless it is clear that recovery cannot be had on any state of the evidence." (App. to Pet., pp. 14-15). The Court remanded the case for trial on this issue against the local union.

The petitioners filed for certiorari requesting this Court to review dismissal of the employer (Question 1) and dismissal of the International Union (Question 2) (Petitioner, p. 2). This Court limited its grant of the petition to Question 1.

SUMMARY OF ARGUMENT

The only question properly before this Court for review is whether it was error to dismiss the employer as a defendant in this action, on the basis of an arbitral award sustaining petitioners' discharges, notwithstanding that the claim of prejudicial unfair representation by their union in the processing of their grievances has been remanded for trial.

The teachings of this Court in *Humphrey* v. *Moore,* 375 U.S. 335, *Vaca* v. *Sipes,* 386 U.S. 171, and *Czosek* v. *O'Mara,* 397 U.S. 24, establish that, where the essence of the claim is that the employer discharged the complaining employees without just cause in breach of the collective bargaining agreement, then the respondent employer must defend the contract claim on its merits, notwithstanding a contractually final and binding arbitral award denying their grievances, provided that the discharged employees can prove that their union prejudicially breached its duty of fair representation in its handling of their grievances. Accordingly, the full vindication of collectively bargained contractual rights together with important remedial considerations preclude premature dismissal of the employer from such litigation.

ARGUMENT

THE COURT BELOW ERRED IN DISMISSING THE EMPLOYER AS DEFENDANT IN THIS LITIGATION

The Court of Appeals held that petitioners made a sufficient showing to entitle them to go to trial on their claim that Local 377 breached its duty of fair representation of them. It did not, of course, determine that those allegations had been established to be true. Yet petitioners' brief is written as if Local 377's guilt had already been determined, contrary to their own position, which prevailed in the Court of Appeals, that this issue could not be decided on a paper record. Rather than burden this Court by responding to petitioners' distorted description of Local 377's conduct with our own version of the facts, we ask the Court to bear in mind that the facts on the duty of fair representation issue are still in controversy. At the present stage of the proceedings, the only question before the Court is whether, since it has not been finally resolved that the union did not violate its duty of fair representation, the award of the Joint Committee in favor of the employer and against petitioners can now be treated as final. In other words, the issue is whether there is a fatal inconsistency between the Court of Appeal's reversal of the summary judgment in favor of the local union and its affirmance of the summary judgment in favor of the employer. It is to this issue alone that we shall address ourselves.

The starting point in "failure of fair representation" cases is *Humphrey* v. *Moore,* 375 U.S. 335, in which Justice White, speaking for a majority of the Court, pointed out that the essence of the charge is that

the employer violated the collective bargaining agreement and that the Union, by failing to fairly represent the employees in the grievance procedure, made it possible for the employer to successfully evade his obligation under the contract. Thus, the alleged "fraud" on the part of the Union, "if proved, would effectively undermine the decision of the Joint Committee as a valid basis for Moore's discharge" even though "no fraud is charged against the employer." (375 U.S. at 343) The majority therefore concluded that the action "is one arising under § 301 of the Labor Management Act." (Id.)

Following the law thus established in *Moore, supra,* the Court filled in the interstices in *Vaca* v. *Sipes,* 386 U.S. 171. Justice White, again speaking for the majority, held that the statutory obligation of the collective bargaining representative "to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct" *(Humphrey* v. *Moore, supra)* was remediable either under § 301, which "permits suits for breach of a collective bargaining agreement regardless of whether the particular breach is also an unfair labor practice within the jurisdiction of the [NLRB]." The Court concluded that where it is alleged that an employer violated a collective bargaining agreement and that the union failed in its duty of fair representation, the damages sustained are primarily those caused by the employer's alleged breach of contract; and that the union's failure in its statutory duty "is no reason to exempt the employer from contractual damages he would otherwise have had to pay". The Court emphasized that "it is the employer's unrelated breach of the contract which triggered the controversy and which caused this portion of the employee's damages.

The employee should have no difficulty recovering those damages from the employer, who cannot, as we have explained, hide behind the union's wrongful failure to act. In fact, the employer may (and probably should) be joined in the fair representation suit, as in *Humphrey* v. *Moore, supra.* It could be a real hardship on the union to pay these damages, even if the union were given a right of indemnification against the employer. With the employee assured of direct recovery from the employer, we see no merit in requiring the union to pay the employer's share of the damages." (386 U.S. at 197).

Finally, in *Czosek* v. *O'Mara,* 397 U.S. 25, with Justice White again speaking for the Court, it was held:

> "Assuming a wrongful discharge by the employer independent of any discriminatory conduct by the union and a subsequent discriminatory refusal by the union to process grievances based on the discharges, damages against the union for loss of employment are unrecoverable except to the extent that its refusal to handle the grievance added to the difficulty and expense of collecting from the employer." (397 U.S. at 29)

Accordingly, a fair reading of *Humphrey, Vaca* and *Czosek* must lead to the following conclusions as applied to the instant case:

(1) The gravamen of the action under § 301 is that the employer breached a collective bargaining agreement.

(2) A ruling by an arbitration committee that there was no breach of agreement is normally final and binding.

(3) But if it is established that the union failed in its duty of fair representation in the handling of the

grievance then the issue of whether the arbitration award was vitiated by such failure, and, so, whether the employer did in fact breach the agreement in making the discharges, must also be decided.

(4) If both issues are decided in favor of petitioners then the damages to be assessed are (a) the wage loss, against the employer and (b) any additional damages which may have resulted from the union's breach of duty, against the union.

Accordingly, to dismiss against the employer at this stage, on the theory that it is entitled to the advantage of clearance by the arbitration committee, without a trial to determine whether such clearance was produced by a failure of fair representation by the union, is to ignore the teachings of *Humphrey, Vaca* and *Czosek*.

CONCLUSION

Respondent Local Union respectfully submits that the judgment of the Court of Appeals dismissing the Respondent Employer as a defendant in this litigation should be reversed.

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ANCHOR MOTOR FREIGHT, INC., *et al.*,
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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONERS' REPLY BRIEF

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Supreme Court of the United States

October Term, 1974
No. 74-1025

BURTICE A. HINES, *et al.*,
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vs.

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PETITIONERS' REPLY BRIEF

INTRODUCTION

Both the respondents Anchor Motor Freight, Inc. and The International Brotherhood of Teamsters attribute to petitioners an argument not made by them and then attack petitioners' integrity for attempting to raise a new claim for the first time in this Court (Anchor Brief, p. 33; I.B.T. Brief, p. 2). Typical of this attack upon a straw man is the International's characterization of petitioners' argument as:

> "petitioners' claim that the Joint Committee award should not be given final and binding effect even if they cannot prove their charge that the union breached its duty to represent them fairly." (I.B.T. Brief, p. 9).

Petitioners make no such contention! Rather, petitioners have urged throughout this litigation that proof of unfair representation by their union entitles petitioners to litigate their §301 claim against the employer notwithstanding the joint committee award (Petitioners' Brief, pp. 15-28). This is the rule suggested by *Vaca v. Sipes*, 386 U.S. 171 (1967) and urged by both union respondents in their respective briefs.[1]

Petitioners' contention regarding the defects of the joint grievance committee system is advanced only in the event this Court is disposed to reject the general rule suggested by *Vaca* in favor of a balancing of interests approach (Petitioners' Brief, p. 28), and then, not as an independent basis for relief, but as one factor among many to be weighed along with the unfair representation (Petitioners' Brief, pp. 29-36).[2]

The dominant theme of the respondent Anchor Motor Freight's Brief is its contention that it is unfair to penalize an innocent employer who at all times acted in good faith and that, therefore, petitioners can and should obtain all their relief from their union. It requires but brief reply to demonstrate that this claim is both legally and factually unsound.

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1. Petitioners welcome the belated conversion of both union respondents to this point of view for the first time in this Court.

2. Neither *General Drivers Local 39 v. Riss & Co.*, 372 U.S. 517 (1963) nor *Humphrey v. Moore*, 375 U.S. 335 (1964) are inconsistent with this approach, for in neither case did the union breach its duty of fair representation. Nor is a differential standard of finality inconsistent with the approach of the N.L.R.B. which, recognizing the dangers inherent in the joint committee system, declines to defer to its awards where evidence of union hostility suggests "that all members of the bipartite panel may be arrayed in common interest against the individual grievant." *Roadway Express, Inc.*, 145 N.L.R.B. 513, 515 (1963); *Youngstown Cartage Co.*, 146 N.L.R.B. 305, 308 n. 4 (1964).

ARGUMENT

Anchor's argument, employing terminology indigenous to the criminal law, such as "done no wrong," "innocent," "vindicated," and "exonerated," entirely misconceives the nature of petitioners' action against Anchor. Petitioners' claim against Anchor is not for violation of criminal law nor even for tort (as is their claim against the union for unfair representation), but rather for breach of contract under L.M.R.A. §301 (29 U.S.C. §185). Petitioners do not seek to punish Anchor for misconduct, but rather seek to be made whole for injuries suffered as a result of their discharge by Anchor in violation of the collective bargaining agreement.

If, indeed, petitioners are innocent of the dishonesty for which they were discharged (as the evidence overwhelmingly indicates and as it must be assumed on consideration of Anchor's Motion for summary judgment,[3] then Anchor would suffer no penalty nor harm of any

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3. Incredibly Anchor persists in its assertion of the petitioners' guilt long after motel clerk Anthony Pagano testified that the discrepancies between the amounts shown on the receipts submitted by petitioners for reimbursement and the lesser amounts recorded on the motel registration cards were wholly attributable to his having recorded the lesser amounts and personally pocketed the difference (R. 51-54). Anchor argues that "petitioners do not explain why the second Pagano statement is entitled to be treated as credible and his first statement, which was also made under oath, is not entitled to be believed" (Anchor Brief, p. 12). Apart from the fact that issues as to the credibility of witnesses are classically to be resolved by the jury and not by courts on motions for summary judgment, there are compelling reasons why Pagano's deposition testimony (R. 51-61) should be credited over his previous notarized statement obtained by Anchor (R. 180-186). The earlier notarized statement is a self-serving document which absolves Pagano of liability for cheating his employer and for receiving income unreported for tax purposes, by placing the blame on petitioners. Thus he had a substantial bias in the form of the motive of saving himself from criminal and civil liability. On the other hand, in his deposition testimony he admitted not only to larceny from his employer and tax fraud but also to having

(Continued on following page)

kind from an order reinstating the falsely accused petitioners. In fact, if Anchor's motive for petitioners' discharge were as represented, then the Company should be grateful to once again have the services of the highly-experienced petitioners.

With respect to petitioners' claim for back-pay, this Court has specifically held that the absence of proof of an employer's "bad faith" is not a sufficient reason for denying back-pay to innocent employees deprived of reinstatement or disadvantaged by an unfair labor practice, *N.L.R.B. v. Rutter-Rex Mfg. Co.*, 396 U.S. 258 (1969), or discrimination contrary to Title VII. *Albemarle Paper Company v. Moody*, ... U.S. ....., 45 L. Ed. 2d 280 (1975). The rationale for these decisions was the remedial purpose of making employees whole and restoring the economic status quo underlying both Title VII and the National Labor Relations Act. As the Court explained in *Albemarle*:

> "If back-pay were awardable only upon a showing of bad faith, the remedy would become a punishment for moral turpitude, rather than a compensation for workers' injuries. This would read the 'make whole' purpose right out of Title VII, for a worker's injury is no less real simply because his employer did not inflict it in 'bad faith.'" 45 L.ed. 2d at 299.

Footnote Continued—

committed perjury when he swore to the earlier notarized statements pinning the blame on petitioners. The law recognizes the inherent reliability of such declarations against penal and pecuniary interest by rendering them admissible even as hearsay without cross examination. McCORMICK ON EVIDENCE, 670-679 (2d ed. 1972). Moreover in the instant case Pagano's first statement inculpating petitioners was simply a notarized declaration not subject to cross examination, while his later deposition exculpating petitioners was testimony subject to cross examination. Neither the cross examination of Pagano by all respondents nor any evidence submitted by them discloses any motive whatsoever for Pagano to give false testimony inculpating himself in three serious felonies.

The same "make whole" purpose underlies the damage remedies for breach of contract,[4] as made relevant to the enforcement of rights under collective bargaining agreements and given statutory status pursuant to L.M.R.A. §301. See *Textile Workers' Union v. Lincoln Mills*, 353 U.S. 448 (1957); *Vaca v. Sipes*, 386 U.S. 171, 195-198 (1967).

Even if "good faith" were a ground for denying or mitigating back-pay damages, the very most that such rule could do for Anchor in the instant case would be to absolve it from back-pay liability for the period from the date of discharge to September 29, 1968, the date on which motel clerk Pagano *sua sponte* advised Anchor officials that petitioners were innocent of the dishonesty for which they had been discharged (R. 55-59, 275-279). Anchor did not offer to reinstate petitioners nor even to clear their good names for the record, but rather silently sent Pagano back to Batavia, New York, (withholding his testimony from the unemployment compensation hearing for which Anchor had brought him to Warren, Ohio[5] (R. 57-58, 275-276) and continued to resist petitioners' claim for unemployment compensation on the ground of their alleged dishonesty (Sandy Dep. II 82-94, Exs. L-3, L-5).

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4. This Court's articulation of the "make whole" principle in *Albemarle* was, in fact, taken verbatim from one of its early decisions in a breach of contract case:

> "[t]he general rule is, that when a wrong has been done, and the law gives a remedy, the compensation shall be equal to the injury. The latter is the standard by which the former is to be measured. The injured party is to be placed as near as may be, in the situation he would have occupied if the wrong had not been committed." *Wicker v. Hoppock*, 6 Wall. 94, at 99, quoted in *Albemarle, supra*, 45 L. Ed. 2d at 297.

5. Anchor disingenuously characterizes this episode as "Because he changed his story Pagano was not required to testify in 'court.'" (Anchor Brief, p.10).

This egregious exhibition of *bad* faith on Anchor's part, when considered in light of the history of the Company's relationship with the union and with petitioners prior to discharge (see Petitioners' Brief, pp. 8-9), casts serious doubt on Anchor's bona fides *ab initio*.

Anchor's claim of having been vindicated in seven distinct adjudications of its discharge of petitioners (Anchor Brief, pp. 23-24) is false and misleading and constitutes, in its purest form, an attempt to pull itself up by its own boot straps. Of the seven cited instances, only the initial decision of the joint grievance committee (wherein petitioners were unfairly represented) purported to decide the merits of the discharge.[6] Equally spurious is Anchor's contention that the summary judgments below represent "concurrent findings of fact by two courts below" not subject to review by this Court except upon a "very obvious and exceptional showing of error," citing *Graver Mfg. Co. v. Linde Co.*, 336 U.S. 271, 275 (1949). (Anchor Brief, p. 24). By definition the summary judgment awarded Anchor and affirmed below was predicated upon a finding that there was "no genuine issue as to any mate-

6. In the second cited instance, the joint grievance committee denied petitioners' request for rehearing (R. 210-212), while the third, fourth and fifth instances involved different stages of the N.L.R.B. General Counsel's exercise of his "unreviewable discretion to refuse to institute an unfair labor practice complaint" held by this Court in *Vaca v. Sipes*, 386 U.S. 171, 182 (1967) to have no bearing on §301—breach of fair representation actions. Finally, the sixth and seventh instances were the decisions of the two courts below, each expressly declining to reach the merits of the discharge on the ground that they were barred by the original decision of the joint grievance committee.

In fact, the only reviewing agency other than the original joint grievance committee to have focused on the merits of the discharge, the Ohio Bureau of Employment Services, concluded that petitioners had not been discharged for just cause and, therefore, awarded unemployment compensation to petitioners Alban and Croft over the vigorous objections of Anchor (Sandy Dep. II 82-94, Exs. L-3, L-5).

rial fact," Rule 56 (c), F.R. Civ. P., and involved no taking of testimony or assessment of the credibility of witnesses upon which the rule in *Graver* is based.

Anchor's total disclaimer of responsibility for the harm suffered by petitioners will not wash in light of the fact that it was Anchor who granted exclusive control of the grievance procedure to the union in the collective bargaining agreement. See Article VII §9 (R. 233) and §5 (R. 231). Having vested total control of petitioners' grievance in the union, it ill behooves Anchor to disclaim responsibility for the union's abuse of that power and to seek to reap its benefits.[7] Cf. *Richardson v. Texas & N.O.R. Co.*, 242 F.2d 230, 235, 236 (5th Cir. 1957).

7. Anchor's claim of "harmless error" (Anchor Brief, pp. 25-28) is preposterous in the face of a record containing overwhelming evidence of petitioners' innocence (Petitioners' Brief, pp. 4-6). It is significant that on the very first occasion on which motel clerk Pagano was asked to testify before any body (on the petitioners' unemployment compensation claim by Anchor) (R. 55-59, 275) he admitted fault and exculpated petitioners. Even, if for some reason not explained by Anchor, fair representation could not have obtained this testimony for petitioners' grievance hearing, the statement of motel owner Repicci (R. 199-209) obtained for petitioners' request for rehearing of their grievance (but never considered on the merits) would, in all probability have changed the result. The Repicci statement, disclaiming any personal knowledge of the events in question, would have reduced the case against petitioners to the uncorroborated statement of Pagano, a witness with a substantial motive for falsely accusing petitioners. Such evidence would hardly have been sufficient to meet the high burden of proof required to sustain the extreme industrial penalty of discharge for wrongdoing. See ELKOURI & ELKOURI, HOW ARBITRATION WORKS, pp. 621-623 (3d Ed. 1974).

These facts clearly demonstrate that the breach of fair representation had a probable impact on the outcome and distinguish the instant case from cases such as *Humphrey v. Moore*, 375 U.S. 335 (1964) where this Court observed:

> "[The employees] have not yet suggested what they could have added to the hearing by way of facts or theory if they had been differently represented. The trial court found it 'idle speculation to assume that the result would have been different had the matter been differently presented.' We agree." 375 U.S. at 350-351.

Moreover, Anchor's assertion that total relief can be obtained from the union (Anchor Brief, pp. 20-23) relies on cases which do not support it[8] and completely ignores the inability of the union to reinstate petitioners to their jobs or even to clear their employment records.

CONCLUSION

The foregoing reasons and authorities conclusively demonstrate that petitioners are entitled to a reversal of the summary judgment granted to Anchor Motor Freight and to a remand to the district court for trial of their wrongful discharge claim.

Respectfully submitted,

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8. In fact, *Butler v. Teamsters, Local 823*, ____ F.2d ____, 76 L.C. ¶10,739 (8th Cir. 1975) and *DeArroyo v. Sindicato De Trabajadores Packinghouse, AFL-CIO*, 425 F.2d 281 (1st Cir. 1970) actually hold to the contrary for which they are cited. In *Butler*, the Court affirmed an award of compensatory damages of $28,000 against the employer and $6,500 against the union, specifically acknowledging that even an employer who has breached the contract in good faith "will be vulnerable if the union has acted unfairly." *Id.* at p. 18,514. In *DeArroyo*, the Court assessed all damages flowing from a wrongful discharge against the employer, notwithstanding that a statute of limitations immunized the union from liability for its unfair representation. Even *Richardson v. Communications Workers of America*, 443 F.2d 974 (8th Cir. 1971) which at least talks about apportioning all liability for damages to the union, does so with respect to cases in which the union wrongfully induces the discharge, acknowledging it to be an exception to the general rule charging breach of contract damages exclusively to the employer.

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vs.

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ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

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ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION BY THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) hereby moves for leave to file a brief as *amicus curiae* arguing that the portion of the decision of the Court of Appeals that this Court has agreed to review (43 U.S.L.Wk. 3571) was wrongly decided. Anchor Motor Freight, Inc. has denied its consent to the filing of said brief because its counsel "[felt] that the parties can adequately cover the issues raised in the case" and that therefore there was no "justification for *amicus curiae.*"

INTEREST OF THE AFL-CIO AND ISSUE TO BE COVERED IN ITS BRIEF AMICUS CURIAE

The AFL-CIO is a federation of 111 national and inter-

national labor unions having a total membership of approximately 14 million working men and women.

As the majority spokesman for organized labor, the Federation has taken a continuing interest in the development of a principled body of law regarding the enforcement of collective agreements. The AFL-CIO has therefore, *inter alia*, filed a brief *amicus curiae* in *Vaca* v. *Sipes*, 386 U.S. 171, 174, 192 n.15, the case in which this Court first confronted the problem presently before it.

The petition and briefs in opposition concentrated on the particular circumstances of this case. It is our view that this emphasis serves to obscure the basic truth that this case is governed by *Vaca*. We believe that it will aid the Court in its deliberations to have a succinct statement of why that is so. The function of the accompanying brief *amicus curiae* is to provide such a statement.

CONCLUSION

For the above-stated reasons this motion for leave to file a brief as *amicus curiae* should be granted.

Respectfully submitted,

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On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS AMICUS CURIAE

This brief *amicus curiae* is filed by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) contingent on the granting of the foregoing motion for leave to file a brief as *amicus curiae*.

ARGUMENT

This is "an action by eight truck drivers for damages caused by their [allegedly] wrongful discharge by their employer and by the [alleged] breach of the duty of fair representation on the part of their union." (Pet. A 9.)[1] In other words, this is the "employee action," envisaged in *Vaca* v. *Sipes*, 386 U.S. 171, 196, against both an employer and a union "based on the employer's alleged breach of

[1] The Employer is Anchor Motor Freight, Inc., and the Union is Local Union No. 377, Chauffeurs, Teamsters, Warehousemen & Helpers.

contract plus the union's alleged wrongful failure to afford [the employees the] contractual remedy of arbitration."

The Court of Appeals held that since the Employees "met the requirement" of "making a [*prima facie*] showing that the action or inaction of the statutory representative complained of was motivated by bad faith," the "defendant local union's motion for summary judgment was improperly granted" by the district court. (Pet. A 14.) At the same time the court below also held "that the district court correctly granted summary judgment in favor of Anchor Motor Freight." (Pet. A 16.)

Thus, the lower court concluded that in a case in which an employee's claim is for wrongful discharge, the employee's case against the employer may be dismissed although he has a viable claim that the union breached its duty of fair representation in presenting his grievance to the arbitrator during the procedure established by the collective agreement for final determination of controversies arising under that agreement. Since the Union has not petitioned for *certiorari*, and since the Court has declined to review the other points raised in the Employees' petition (43 U.S. L.Wk. 3571), the validity of that conclusion is the only issue here.

We submit that the holding of the Court of Appeals is squarely contrary to the decisions of this Court in *Vaca* and *Czosek* v. *O'Mara*, 397 U.S. 25, and utterly misconceives the tripartite relationship between employees, employers and unions established by § 9(a) of the National Labor Relations Act, as amended, and §§ 203(d) & 301 of the Labor Management Relations Act, as amended.

1. The Employees' primary cause of action is the one against the Employer because "it is the employer's * * * [alleged] breach of contract which triggered the controversy." (*Vaca*, 386 U.S. at 197.) "[T]he [alleged] damage to [the] employees had its roots in their discharge." (*Czosek*, 397 U.S. at 28.) As we shall elaborate below (pp. 4-6), that is the reason employees cannot recover against either the employer or the union unless they can establish that they have been unlawfully discharged. But

> "where the bargaining agreement contains grievance and arbitration provisions which are intended to provide the exclusive remedy for breach of contract claims * * * and where the employee's claim is based upon breach of the collective bargaining agreement, he is bound by terms of that agreement which govern the manner in which contractual rights may be enforced. For this reason, it is settled that the employee must at least attempt to exhaust exclusive grievance and arbitration procedures established by the bargaining agreement. Republic Steel Corp. v. Maddox, 397 U.S. 650." (*Vaca*, 386 U.S. at 184-185.)

The major exception to this exclusivity rule was established in *Vaca*:

> "[T]he wrongfully discharged employee may bring an action against his employer in the face of a defense based upon the failure to exhaust contractual remedies, provided the employee can prove that the union as bargaining agent breached its duty of fair representation in its handling of the employee's grievance." (*Id.* at 186; footnote omitted.)

The Court of Appeals' reversal of the grant of summary judgment in favor of the Union therefore restored to the Employees the opportunity to establish a jurisdictional precondition for their lawsuit. But it did not change the underlying nature of this suit as one for breach of contract against the Employer.

2. *Vaca* also teaches that if it is determined that the union breached its duty of fair representation, the employee not only may proceed against the employer but that his claim against the employer is his basic cause of action. Put another way, the employer's liability is primary and that of the union is secondary. The employee may recover at all only if he establishes that his discharge was wrongful and in that event he may recover from the employer the damages consequent upon that unlawful discharge.

Mr. Justice Rehnquist has recently reminded that "the very concept 'wrongful discharge' implies some sort of statutory or contractual standard that modifies the traditional common-law rule that a contract of employment is terminable by either party at will." (*Andrews* v. *Louisville & Nashville R. Co.*, 406 U.S. 320, 324.) So far as we are aware, nothing in any federal or state statute places any limitation on an employer's unfettered common law prerogative to discharge an employee on the bare suspicion of wrongdoing. Moreover, if there are, or have ever been, any appreciable number of individual employment contracts modifying that common-law rule, that has escaped the attention of all those knowledgeable in the field. The existence of a collective bargaining agreement does not alter the basic relationship between the employer and the employee; it merely modifies, to the extent provided in the agreement, the absolute prerogative to discharge which the employer would otherwise enjoy. As Mr. Justice Douglas explained in *Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U.S. 574, 584:

> "Collective bargaining agreements regulate or restrict the exercise of management functions; they do not oust management from the performance of them. Management hires and fires, pays and promotes, supervises and plans. All these are part of its function • • •."

Because in our system of industrial relations employment decisions are normally made by the employer, rather than the union, in *Vaca* Mr. Justice White asked "what portion of the employee's damages may be charged to the union: in particular, may an award against a union include • • • damages attributable solely to the employer's breach of contract?" (386 U.S. at 196-197.) And, he responded:

> "We think not. Though the union has violated a statutory duty in failing to press the grievance, it is the employer's unrelated breach of contract which triggered the controversy and which caused this portion of the employee's damages.
>
> • • • •
>
> "The governing principle, then, is to apportion liability between the employer and the union according to the damage caused by the fault of each. Thus, damages attributable solely to the employer's breach of contract should not be charged to the union, but increases if any in those damages caused by the union's refusal to process the grievance should not be charged to the employer. In this case, even if the Union had breached its duty, all or almost all of [the employee's] damages would still be attributable to his allegedly wrongful discharge by [his employer]." (*Id.* at 197-198.)[2]

In *Czosek*, Justice White returned to the same point, and in so doing made this holding more explicit:

> "Assuming a wrongful discharge by the employer independent of any discriminatory conduct by the union and a subsequent discriminatory refusal by the union

[2] Of course where "a union has affirmatively caused the employer to commit the alleged breach of contract," the foregoing rationale does not apply. (*Id.* at 197, n. 18.)

> to process grievances based on the discharge, damages against the union for loss of employment are unrecoverable except to the extent that its refusal to handle the grievances added to the difficulty and expense of collecting from the employer." (397 U.S. at 29.)

In sum, the employer is liable for "the natural consequence of [his] breaches of bargaining agreements" (*Vaca*, 386 U.S. at 186), *viz.*, the consequences "flow[ing from] • • • loss of employment," (*Czosek*, 397 U.S. at 29). For, the employer's independent action in discharging the employee is the sole cause of that loss. The union's later "unrelated • • • violat[ion of] a statutory duty in failing to press the grievance" is a cause not of that loss but of the employee's "added difficulty and expense of collecting from the employer." *(Id.)* And, the union is chargeable for the consequences of *its* wrong. *(Id.)* It follows that if, in fact, the employer did not violate the agreement the employee's suit based on his discharge, whether brought against the employer or the union or both must fail. For, the employee has not suffered any legal harm at the hand of the employer if the discharge was not a violation of the collective agreement, and, in such a case the union's failure to press his grievance did not "increase" (*Vaca*, 386 U.S. at 198) that non-existent harm.

3. The ultimate question, therefore, is whether the Employees can maintain their claim for wrongful discharge against the Employer. The Court of Appeals held that they could not because of the adverse disposition of their claim by the arbitration panel under the contractual grievance procedure. That court reasoned as follows (Pet. A15-A16):

> "Appellant contends that the employer did not have 'just cause' to discharge them because of the recantation of the motel clerk. As we said in Balowski v.

> International Union, *supra*, 372 F.2d [829] at 833,
>
> '[i]t is apparent that what plaintiff is attempting to do is to relitigate his grievance in his proceeding. This he cannot do when the collective bargaining agreement provides for final and binding arbitration of all disputes, absent a showing of fraud, misrepresentation, bad faith, dishonesty of purpose, or such gross mistake or inaction as to imply bad faith on the part of the Union or the employer. Cf. Smith v. Evening News Association, 372 U.S. 195.'
>
> "No evidence of any misconduct on the part of the employer to avoid the arbitration award is suggested. Although appellants argue that there was a conspiracy between the union and the company, none of the evidence offered to substantiate this claim is sufficient under the requirement of *Balowski, supra*, that something more than suspicion be shown. Accordingly, we hold that the district court correctly granted summary judgment in favor of Anchor Motor Freight. *See* United Steelworkers of America v. American Manufacturing Co., 363 U.S. 564; United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574; United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593." (Footnote omitted.)

The foregoing reasoning would be unimpeachable but for the Court of Appeals' contemporaneous holding that the District Court had erred in granting summary judgment for the Union on the claim that it had breached the duty of fair representation in processing the discharge grievance.

Under *Vaca* the lower court's holding that the duty of fair representation claim against the Union was still alive pretermitted the conclusion that the suit against the Employer was barred by the outcome of the grievance procedure. For, as we have seen (pp. 2-3), *Vaca* held that an employee's claim for wrongful discharge against an employer is not

barred if the union breached its duty of fair representation in processing his claim. The essence of *Vaca* is that the principle of finality declared in *Republic Steel* assumes that the system has operated in the manner contemplated by Congress—*viz.*, that the union has met its responsibilities in conformity with the duty of fair representation imposed by § 9(a).[3]

[3] *Balowski* v. *International Union, etc.*, 372 F.2d 892 (C.A. 6) which the court below purported to follow is entirely consistent with our analysis. That case was likewise a suit by an employee under a collective bargaining agreement after an arbitration unfavorable to the employee. In Part I of the Court of Appeal's opinion (372 F.2d at 831-833), the court held the arbitrator's award to be final and binding. In part II (*id.* at 833-835), that court dealt with the employee's claim that the union had breached its duty of fair representation. After determining that his complaint was insufficient to allege such a breach, the court said:

> "This finding disposes of the claims against General Motors as well as the claims against the defendant Unions. Ostrofsky v. United Steelworkers, 171 F. Supp. 782, aff'd 273 F.2d 614, cert. denied, 363 U.S. 849. We therefore hold that in light of the foregoing, defendants' motions for summary judgment should have been granted." (*Id.* at 835.)

If the Court of Appeals had considered the arbitration award to be final even if the union had breached its duty of fair representation, the finding in the union's favor would have been irrelevant to the claim against General Motors. Thus, implicit in the quoted statement is the understanding that the arbitration award would not have been final if the employee's claim against the union could stand. What is but elliptically stated in *Balowski* is made clear by the *Ostrofsky* case, which it cites:

> "• • • plaintiffs cannot sue Bethelehem for their allegedly wrongful discharge unless the Union acted arbitrarily or in a discriminatory manner in refusing to press plaintiffs' grievances to arbitration under the Agreement and thereby breached its duty of fair representation. This is the same issue which controls plaintiffs' claims against the Unions." (171 F. Supp. at 792.)

Then, having determined that the union breached no duty to

The only difference between *Vaca* and this case is that there the union's action kept the case from ever reaching arbitration, whereas it is alleged here that the Union's bad faith presentation infected the award. This difference in fact cannot affect the legal result. For, the principle of the finality of arbitration awards declared in the *Steelworkers Trilogy*, on which the Court of Appeals herein relied, rests on § 203(d) of the Act:

> "Section 203(d) of the Labor Management Relations Act, 1947, 61 State 154, 29 USC § 173(d), states "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. . . ." That policy can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play." (*Steelworkers* v. *American Mfg. Co.*, 363 U.S. 564, 566.)

The principle of finality declared in *Republic Steel* rests on the same statutory basis. (See 379 U.S. at 653.) And since the union's duty has the same statutory basis (§ 9(a)) in both situations, the accommodation of the applicable principles must also be the same.

Finally, *Vaca* makes clear that the Court of Appeals was mistaken in its reliance on the absence of "misconduct on the part of the employer" in the grievance procedure, and on the employees' failure to prove a conspiracy between the

the employees the *Ostrofsky* Court concluded, in language which presaged that in *Balowski*:

> "This finding disposes of the claims against Bethlehem as well as the claims against the Union. It is not necessary to decide whether Bethlehem had just cause for discharging the plaintiff." (*Id.* at 794.)

union and the employer:

> "It is true that the employer in such a situation may have done nothing to prevent exhaustion of the exclusive contractual remedies to which he agreed in the collective bargaining agreement. But the employer has committed a wrongful discharge in breach of that agreement, a breach which could be remedied through the grievance process to the employee-plaintiff's benefit wer it not for the union's breach of its statutory duty of fair representation to the employee. To leave he employee remediless in such circumstances would, in our opinion, be a great injustice. We cannot believe that Congress, in conferring upon employers and unions the power to establish exclusive grievance procedures, intended to confer upon unions such unlimited discretion to deprive injured employees of all remedies for breach of contract. Nor do we think that Congress intended to shield employers from the natural consequences of their breaches of bargaining agreements by wrongful union conduct in the enforcement of such agreements." (386 U.S. at 185-186.)

CONCLUSION

For the above-stated reasons the Court of Appeals' affirmance of summary judgment in favor of Anchor Motor Freight, Inc. should be reversed.

Respectfully submitted,

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No. 74-1025

IN THE

Supreme Court of the United States

OCTOBER TERM 1975

BURTICE A. HINES, *ET AL.*,
Petitioners,

v.

ANCHOR MOTOR FREIGHT, INC., *ET AL.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF, AND BRIEF, ON BEHALF OF PROD, INC., JAMES BANYARD AND GEORGE E. KISS

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July 3, 1975

ABE DUPLICATORS, INC.–1722 Eye Street, N.W.–Washington, D.C.–298-8537

IN THE

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BURTICE A. HINES, *ET AL.*,
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Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

PROD, Inc., James Banyard and George Kiss hereby move, pursuant to Rule 42 of this Court, for leave to file a brief as *amici curiae*, urging reversal of the decision of the Court of Appeals insofar as it upheld dismissal of petitioners' §301 action against Anchor Motor Freight. Counsel for petitioners has consented to the filing of this brief; counsel for respondents have refused to consent. For the reasons discussed hereafter, we submit that our motion

should be granted in the interests of securing vital background information concerning the structure and operation of the Teamster joint labor-management committee which rendered the grievance award to which the Court of Appeals has deferred below. Before deciding whether, and under what circumstances judicial deference to a "final" Teamster joint committee decision might be appropriate, in the context of a §301 proceeding by individual employees, we believe that the Court should possess an understanding of the underlying grievance machinery and procedures.

PROD is a non-profit corporation, also known as the Professional Drivers Council for Safety and Health, which is supported by the voluntary membership dues of approximately 1,200 professional drivers, the vast majority of whom are covered by the Teamster National Master Freight Agreement and related supplements containing grievance machinery providing in effect only for joint labor-management committee resolution of their grievances protesting employer contract violations.

James Banyard is an individual member of Local 407 who was discharged in 1969 by McLean Trucking Company for refusing to drive a dangerously overloaded truck in violation of state law. His grievance was processed by the Teamsters Union up through the hierarchy of its joint committee system until it was eventually denied by the National Joint Committee despite the parties' concession that the reason for his discharge was his refusal to drive an admittedly illegal vehicle, and in spite of the protection of Article 16 of the National Master Freight Agreement which prohibited McLean from requiring its employees to operate such vehicles. Mr. Banyard ultimately secured a reinstatement and backpay award from the National Labor Relations Board only because his discharge also happened

to violate the statute it administers. *See Banyard v. N.L.R.B.*, 505 F.2d 342 (D.C. Cir. 1974); *McLean Trucking Co.*, 216 NLRB No. 161 (1975).

George E. Kiss is a driver for The Service Transport Company. He is also an elected union steward whose job it is to handle fellow employees' grievances and present them to joint committees, and he is a member in good standing of Local 377, a defendant in the underlying proceeding. The collective bargaining agreement between Local 377 and Mr. Kiss' employer contains grievance machinery providing in effect for the final resolution of all employee disputes concerning the employer's contract violations by submission to joint committees. Moreover, in the event the Court of Appeals decision should be upheld, Mr. Kiss, as a member of Local 377, stands the risk of being injured to the extent that increased damages may be awarded to petitioners against his Local Union.

PROD, and its entire membership, Banyard and Kiss all share an intimate familiarity with the structure and workings of Teamster joint grievance committees and a strong interest in the outcome of this proceeding. They offer to provide this Court with information it has not had the opportunity to consider respecting Teamster joint committees similar in every respect to the committee which arrived at the decision to which the Court of Appeals deferred below. It does not appear that this information would otherwise be made available to this Court.

In their brief, *amici* will demonstrate why joint committee decisions to deny individual Teamster members' breach of contract claims against trucking companies really constitute no more than decisions by their Union not to process their grievances and are accordingly not

the type of "final adjustment" of a grievance to which this Court has said the courts should defer. Whatever deference this Court might feel it would be appropriate to accord to arbitral decisions respecting claims by employees that they were the victim of an employer breach of contract where they can show their union breached its duty of fair representation in processing their claim, *amici* will show why the same degree of deference may not properly be accorded to joint committee awards.

Respectfully submitted,

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July 3, 1975

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IN THE

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OCTOBER TERM 1975

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Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF *AMICI CURIAE*, PROD *ET AL.*, URGING REVERSAL

BACKGROUND

Through the years this Court has slowly molded a general body of law to guide the judiciary in handling suits arising under collective bargaining agreements. In order to promote the Congressional objective embodied in §203(d) of the LMRA[1] that the desirable method of settling grievances is by "[f]inal adjustment by a method agreed upon by the parties" as a means of promoting industrial peace,

[1] 29 U.S.C. 173(a).

this Court has favored judicial deference to contractual grievance-arbitration procedures.[2] Thus, the Court has held that final arbitration awards must be enforced by the courts even though they might disagree with the arbitrator's interpretation of the contract, provided his decision draws its essence from the collective bargaining agreement.[3] Similarly, the Court has ruled that the parties to the agreement may sue to compel arbitration[4] and that in determining whether to grant the requested relief, the sole function of the courts should be to ascertain "whether the party seeking arbitration is making a claim which on its face is governed by the contract",[5] and in doing so, all doubts should be resolved in favor of arbitration.[6]

One of the most troublesome problems the Court has faced, however, concerns whether and under what circumstances it should permit individual employees, rather than unions, to sue employers for alleged breach of collective bargaining agreements. In light of the federal policy favoring the resolution of all such disputes *via* the agreed-upon grievance procedures, the Court held in *Republic Steel v. Maddox*, 379 U.S. 650 (1965), that employees wishing to assert employer contract violations in the courts

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[2] *See Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957).

[3] *United Steelworkers v. Enterprise Wheel and Car Corp.*, 363 U.S. 593 (1960).

[4] *Lincoln Mills, supra.*

[5] *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 568 (1960).

[6] *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960).

must at least attempt first to use the contract grievance procedure to obtain redress. And, in determining whether an employee could later resort to the courts, the test was generally whether the employee could show that he was the victim of union malice, fraud or other dishonest behavior. *See Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953); *Humphrey v. Moore*, 375 U.S. 335, 348 (1964).[7]

In *Vaca v. Sipes*, 386 U.S. 171 (1967), the Court examined in some depth the plight of the individual employee in a discharge situation for the first time. It acknowledged that since contract grievance procedures are generally devised and controlled by unions and employers, they "may well prove unsatisfactory or unworkable for the individual grievant." *Id.* at 185.[8] The Court observed:

> We cannot believe that Congress, in conferring upon employers and unions the power to establish exclusive grievance procedures, intended to confer upon unions such unlimited discretion to deprive injured employees of all remedies for breach of contract. Nor do we think

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[7] It should be noted that in both of these cases the alleged contract rights being pressed by the complainants were in direct conflict with the interests of a large segment of the other bargaining unit employees. The Court was understandably reluctant to circumscribe too narrowly the union's discretion in light of the fact that the bargaining process of necessity subordinates individual interests to the collective interests of all the employees in the bargaining unit which the Union is, in turn, obligated to represent.

[8] The Court has reaffirmed this observation in two more recent opinions: *Glover v. St. Louis-San Francisco Ry. Co.*, 393 U.S. 324, 330 (1969); *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 58 n. 19 (1974).

> that Congress intended to shield employers from the natural consequences of their breaches of bargaining agreements by *wrongful* union conduct in the enforcement of such agreements. *Id.* at 186 (Emphasis added.).

Thus, the Court concluded, individuals should be permitted to bring actions against their employers for wrongful discharges *provided they could prove* that the union breached its duty of fair representation in handling their grievances. Moreover, the Court went on to conclude that to the extent the union's breach may have enhanced or contributed to the employee's injury, the courts should fashion a remedy against the union as well as the employer. *Id.* at 187. The following formula for apportioning damages between the employer and union was adopted: "damages attributable solely to the employer's breach of contract should not be charged to the union, but increases if any in those damages caused by the union's refusal to process the grievance should not be charged to the employer." *Id.* at 197-98. Finally, although the nature of their respective liabilities are quite different, it is clear that the Court anticipated that, as a result of its decision, "the courts will be compelled to pass upon whether there has been a breach of the duty of fair representation *in the context of many §301 breach-of-contract actions.*" *Id.* at 187 (Emphasis added.).

It is important to note, however, that *Vaca* arose in the context of an employee's effort to override his union's decision not to process his grievance through the final step of the grievance machinery — arbitration. Recognizing the union's need for flexibility in weeding out frivolous grievances, the Court ruled that the individual would

be entitled to obtain judicial review of his breach of contract claim only in the event he could first demonstrate that the union's decision not to arbitrate his claim was "arbitrary, capricious or in bad faith." *Id.* at 190. However, the Court did not focus its attention upon the situation where an employee might ask a court to override not a union decision, but rather a final arbitral award. In light of this Court's opinion in *Enterprise Wheel* concerning the strong federal policy of upholding final arbitral decisions, the courts will naturally be reluctant to upset such awards even in the face of a union breach of duty in handling the member's grievance. And, since this Court has ruled in *Vaca* that damages may be assessed against unions in suits by individual members for such breaches of their duty of fair representation, the courts may be content that they will not effectively be denying the aggrieved individual relief. These considerations may well have played a role in the Court's decision below.

However, regardless of whatever degree of finality the Court might believe it would be appropriate to attach to a final arbitration decision when it is being attacked by an aggrieved individual in a §301 proceeding, the same degree of finality should not be attached to joint committee settlements of their underlying contract claims. Yet, the Court of Appeals below is not the only court which has accorded a joint committee award the same degree of respect and finality.[9] The genesis of this judicial policy

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[9] *See e.g., Harris v. Chemical Leaman Tank Lines, Inc.*, 437 F.2d 167 (5th Cir., 1971); *Morris v. Werner-Continental, Inc.*, 466 F.2d 1185 (6th Cir., 1972); *Price v. Int'l. Bro. Teamsters*, 457 F.2d 605 (3rd. Cir., 1972).

of according equal treatment to joint committee awards lies in this Court's decision in *General Drivers v. Riss & Co.*, 372 U.S. 517 (1963), where it was held that the union might sue to compel employer compliance with a joint committee grievance settlement in spite of the fact it was not the equivalent of an arbitration award so long as the parties had agreed contractually to be bound by such "final" grievance settlements. We do not take issue with this holding as it applies to suits by either of the parties to the collective bargaining agreement to obtain compliance by the other with a joint committee award favorable to it. However, we do believe that routine extension of that holding to require judicial deference to joint committee decisions upholding alleged employer breach of contract claims by discharged employees is improper. Yet, this is what the Court of Appeals did implicitly below. For reasons we shall discuss *infra*, *amici* submit that this Court should limit the scope of its holding in *Riss* so as to preclude the more or less automatic deference the courts accord to joint committee awards in §301 suits by individuals whose breach of contract claims against their employers have been denied by the joint Teamster-management panels. We might add that those commentators who have addressed this particular problem agree with this contention.[10]

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[10] Feller, *A General Theory of the Collective Bargaining Agreement*, 61 *Cal. L. Rev.* 663, 836-838 (1973); Tobias, *Individual Employee Suits for Breach of the Labor Agreement and the Union's Duty of Fair Representation*, 5 *Toledo L. Rev.* 514, 540-543 (1974).

ARGUMENT

THE TEAMSTER JOINT LABOR-MANAGEMENT GRIEVANCE COMMITTEE DECISION BELOW IS UNWORTHY OF JUDICIAL DEFERENCE

The effect of the Court of Appeals decision below is to let Anchor Motor Freight off the hook, scott free, in spite of the fact the Company was in a position effectively to shape, if not actually to decide, petitioners' grievance against it. Under these circumstances, regardless of whether or not its action toward the petitioners may have been violative of the collective bargaining agreement, it is unlikely that the joint committee would find such a violation. As a result, even though the petitioners may still be able to recover some damages against Teamster Local 377, assuming they can prove that it breached its duty of fair representation, they have effectively been denied the opportunity to obtain a reinstatement award against the one truly culpable party who has the capacity to remedy their injury. The fact of the matter is that joint committees are structurally incapable of rendering impartial judgments on employee breach of contract claims due to the employer participation on those committees. Yet, the effect of the decision below will be to encourage employer efforts to rig decisions and will exonerate them from any future liability when they have procured a favorable decision. To understand why, we will examine the structure of the Teamster Joint Committee grievance machinery contained in the National Master Freight Agreement which covers the bulk of the nation's trucking companies. The grievance machinery contained in this Agreement and most of its various related supplements is similar in every regard to the machinery which produced the decision to which the Sixth Circuit deferred below.

While most collective bargaining agreements contain a multi-step grievance machinery for the settlement of disputes arising under the contract, machinery which ultimately leads to impartial arbitration,[11] most Teamster trucking agreements provide only for the submission of disputes to bi-parte committees made up of an equal number of labor and employer representatives.[12] These

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11 In a 1973 study by the Bureau of Labor Statistics entitled, "Characteristics of Agreements Covering 1,000 Workers or More," it is reported that 91% of all major collective bargaining contracts contain grievance machinery providing for arbitration. See Table 70, p. 64, *U.S. Bureau of Labor Statistics, Dep't. of Labor, Bull. No.* 1822 (July 1, 1973).

12 Several of the Teamster Area Supplements to the Master Freight Agreement do provide for automatic arbitration of discharge cases after a certain committee in the hierarchy has deadlocked. These Supplements cover a total of 15 states, mostly in the West, and the District of Columbia.

However, the bulk of the supplemental agreements (covering 33 other states) contain grievance machinery which does not allow the submission of grievances to arbitration except in discharge cases where "Deadlocked cases *may* be submitted to umpire handling if a majority of the Joint Area Committee determines to submit such matter to an umpire for decision." (See e.g., Article 45(e) of the Central States Over-the-Road Supplement) (Emphasis added). *Amici* know of no grievance ever having been referred to an umpire pursuant to this procedure. In fact, since a deadlocked grievance in a discharge case is the equivalent of a victory for the industry representatives, it is difficult to conceive a situation where they might agree to refer a discharge grievance to an umpire who might rule in the grievant's favor.

Moreover, it is not clear whether arbitrators who do issue awards in deadlocked cases have the authority to bind the parties in light of Article 8 of the Master Freight Agreement which provides:

(continued)

committees have the authority to settle all disputes by majority vote, whether or not they arose under the contract.[13] While the impartiality of the committee members is supposedly guaranteed by virtue of the fact the Local union and employer directly involved in a given dispute act only as advocates and do not technically participate in the resolution of their particular grievance, as a matter of fact, the committee members are hardly disinterested.

Because those who sit on the committee are covered by the same contract, their decision may determine their future

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12 (continued)

> Any provisions in the grievance procedure of any Supplement hereto which would require deadlocked disputes to be determined by any arbitration process shall be null and void as to any grievances involving interpretation of the Supplemental Agreement or this National Master Agreement. The decision of the National Grievance Committee as to whether a grievance involves an interpretation which is subject to this procedure shall be final and conclusive.

13 For example, Article 45 of the current National Master Freight Agreement, Central States Over-the-Road Supplement, provides: "The Union and the Employers agree that there shall be no strike, lockout, tie-up, or legal proceedings without first using all possible means of settlement, as provided for in this Agreement . . . *of any controversy which might arise.*" (Emphasis supplied.) The provision then provides for the submission of such controversies for *settlement* to the joint committee system which does not effectively provide for impartial arbitration at any level. Article 7 of the Master Agreement provides that the grievance procedure "may be invoked only by the authorized Union representative or the Employer."

rights and liabilities in similar situations. NLRB Board Member Howard Jenkins has accordingly observed:

> Whatever result such a Committee of the protagonists might reach, it is in part the product of economic power, adjustment with an eye on other disputes or differences between them or on their future bargaining positions, and other considerations unrelated to the merits of the particular [individual] claim before the Committee. *Terminal Transport Co.*, 185 NLRB No. 96, 75 LRRM 1130, 1133 (1970) (dissent).

Moreover, there often is discussion among the union and employer members who sit on committees concerning upcoming grievances and possible solutions. Indeed, one student and advocate of the joint committee process has described this type of intercourse as the "expected norm."[14] In addition, it is standard practice that you vote in favor of your colleague's position or else he may not vote in favor of your position when you argue the next case before the committee on which he is sitting as a member. Thus, industry committee members will invariably close ranks and vote to uphold a colleague's discharge of an employee and the best the Union can do on his behalf is to deadlock the committee.

As a result, when a joint committee hands down a decision to the effect that an individual's breach of contract claim against his employer has been denied, it is obvious that what actually took place was that the Union decided

[14] Azoff, *Joint Committees As An Alternative Form of Arbitration Under the NLRB*, 47 *Tul. L. Rev.* 325, 361 (1973).

against pressing the member's grievance which would have deadlocked the committee. The only other alternative would be for the union representatives to attempt to negotiate a compromise or settlement of the member's claim in light of the fact that an outright victory is not within their power to secure because deadlocked cases are only referred to another joint committee and there is no opportunity to insist upon impartial arbitration.[15] In either case, the individual is effectively denied the full protections supposedly afforded by his contract. In any event, it should be clear that any so-called "final" joint committee decision denying all or even part of any employee's breach of contract claim against his employer is by no means the equivalent of an impartial arbitrator's decision on the merits of his contract claim.[16] It is in fact tantamount to no more or less than a union decision to process his grievance no further. Such union decisions are supposed to be scrutinized in accordance with the *Vaca* standards and they are not entitled to judicial deference pursuant to *Enterprise Wheel*.

[15] Grievances which are deadlocked at any committee are referred automatically to the next committee one step up the ladder in the hierarchy of committees whose jurisdiction encompass broader and broader geographic areas until a repeatedly deadlocked grievance may finally arrive before the National Joint Committee in Washington, as in *amici* Banyard's case. Article 8 of the National Master Freight Agreement then provides: "[i]f the National Grievance Committee is deadlocked on the disposition of the dispute then either party shall be entitled to all lawful recourse to support its position in the matter." Thus, while the Union retains the right to strike in an effort to procure a favorable disposition of its grievance, the likelihood of the Union's taking such action on behalf of an individual grievant in a discharge case is remote to say the least.

[16] *See* Feller, *supra*, p. 838.

There is an additional reason why this Court should reverse the decision below which treated the joint committee award as the equivalent of an arbitral decision: there simply is no assurance that the decision was based upon an impartial, objective evaluation of the evidence or that it was even based upon an application of the relevant contract provisions. It is widely recognized that the Teamster Joint Committee system "is designed to maximize and exploit the opportunities for horsetrading and collusion between the employer and the union." Azoff, *supra*, pp. 328-9, 336. While the system permits the Teamsters Union and trucking employers great flexibility in negotiating solutions to a wide range of problems they may encounter during the term of an agreement, it is this very flexibility which permits the arbitrary and unjust disposition of individual grievances often based upon considerations totally alien to the contract. Indeed, the grievance machinery is often used as a tool by union leaders for disciplining members who may have become a thorn in their sides for whatever reason. *Id.* at 329, 336. It simply cannot be said that this Court intended to sanction or encourage a policy of judicial deference to the "final" decisions rendered by Joint Committees in individual discharge cases.

It would surely impose an unwarranted hardship upon petitioners, and all others similar situated, were this Court not to make their employer available to them to obtain relief in their suit which derives primarily from its breach of contract. It would also impose an unjustified hardship if this Court were to sanction the traditional judicial approach for according deference to joint committee decisions unless the petitioners can actually prove arbitrariness or collusion. When sending this case back with

instructions to reinstate the petitioners' §301 action against Anchor, this Court should consider offering further guidance to the courts in their treatment of joint committee decisions in light of the fact the design and operation of the grievance machinery virtually immunizes the Teamsters Union and trucking employers from liability in §301 suits by individuals.

The root of the problem facing individuals in persuading courts that they should accord judicial review to their §301 suits lies in the unusual difficulty they face in adducing evidence demonstrating that the union breached its duty of fair representation. Courts normally focus exclusively upon the union's role in prosecuting a member's grievance, and because the courts have viewed the committee as the equivalent of an arbitral tribunal, exempting it from their scrutiny, it has been next to impossible for individual Teamster members to meet the threshold of evidence required to actually demonstrate fraud, collusion or bad faith. This limited approach is deficient and fundamentally unsound where the Teamsters Union has cloaked itself in the robes of both the prosecutor and the judge of its members' grievances. The Teamsters Union does not exercise its discretion in the processing of its members' grievances before Joint Committees; rather it exercises discretion at the Committee level in deciding whether to deny, compromise or deadlock their grievances. It accordingly will not do for the courts to limit their inquiry to whether the Teamsters Union *processed* a member's grievance before the joint committees.[17]

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[17] *See e.g., Hensley v. United Transporters, Inc.*, 346 F. Supp. 1108, 1115 (N.D. Tex. 1972), where the court found the fact that the Teamsters *represented* the discharged plaintiff at each joint committee hearing as compelling evidence of lack of fraud, collusion or conspiracy.

Moreover, in spite of the fact that the joint committee proceedings may well have been rigged, an individual Teamster will be hard put to demonstrate collusion because the Committee is designed to cover its tracks thoroughly. In the first place, the individual grievant may not even have been permitted to appear before the Joint Committee.[18] Those who do appear are generally asked to sign a statement acknowledging that they received the opportunity to present their grievance fully and this document is generally assigned great weight by the courts absent extrinsic evidence to rebut it.[19] And, such evidence is never available partly because the minutes of Joint Committee hearings are invariably terse and totally unilluminating, and because the Committee awards only state whether the grievance was granted or denied and never offer any supporting rationale.[20] Joint Committee decisions do not accordingly lead to the development of a body of law of the shop, particularly where they dispose of individual's grievances. For this additional reason, the outcome of individual grievances can, and regularly do vary 100% in spite of their similar nature and origin. There simply is no check upon the arbitrary disposition of their grievances. From the individual Teamster's point of view, the Joint Committee system operates in a totally Kafkaesque fashion to resolve their breach of contract grievances in discharge and discrimination cases and the courts seem to be joining in the conspiracy.

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18 *DeBelsey v. Tank Lines, Inc.*, 89 LRRM 2353 (D.Pa. 1973).

19 Azoff, *supra*, pgs. 358-9.

20 Azoff, *supra*, page 373. For example, *amici* Banyard's grievance was denied by the National Joint Committee with the following language: "The claim of the Union is denied. *See Banyard v. NLRB, supra*, 505 F.2d at 349.

THE NEED FOR A REVISED JUDICIAL APPROACH TO CONSIDERING INDIVIDUAL TEAMSTER BREACH OF CONTRACT CLAIMS

Collective bargaining agreements essentially create rules restricting management discretion in its dealings with employees. The construction and application of those rules is, of course, a function performed by management on a daily basis. As a result, "[t]he enforcement mechanism . . . is the essence of the industrial collective bargaining agreement . . . The agreement's most significant function is to provide a system for the adjudication, at the instance of an aggrieved employee, of complaints that management, in exercising its power to direct the work force, has not complied with the rules jointly agreed to.'" Feller, *supra*, page 742. But, as we have seen, Joint Committees are unable at best, due to their political nature and the equal strength of labor and management, to do more than negotiate compromises and settlements of employer contract violations involving individuals' grievances. This is hardly tantamount to effective enforcement. At worst, the Joint Committee members can collaborate to deprive a member of clear contract protections.

Whatever the Union's duty may be to the collective interests of all employees in bargaining units during the negotiation phase of collective bargaining — and occasionally during the administration phases[21] — where certain individual interests must inevitably be submerged in the collective interest, when it comes to enforcing individual contract rights and protections in discharge cases, a union's duty should be somewhat higher. In any event, Teamster

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21 *See e.g., Humphrey v. Moore, supra*, and other similar cases involving employee seniority disputes.

members covered by the National Master Freight Agreement need to be assured certain rudimentary elements of due process during the processing of their breach of contract claims against trucking companies that they currently do not enjoy under the joint committee system.

When speaking for the Court in *Republic Steel v. Maddox, supra,* Mr. Justice Harlan reasoned that a union's "interest in prosecuting employee grievances is clear . . . since conscientious handling of grievance claims will enhance the union's prestige with employees." 379 U.S. at 653. However, in this day and age of union security clauses in collective bargaining agreements, often covering an entire industry (e.g., trucking), and of little or no competition among unions to represent employees of a certain craft, employees often have little choice as to whether, or which union to join. (This is certainly true for most professional drivers working in the motor freight industry.) As major unions have joined the ranks of the country's large institutions, along with government and big business, and have become increasingly secure with their respective worker constituencies, the internal pressure upon them to zealously uphold an individual member's contract rights has diminished substantially. Of course, where the individual member's interests coincide with the union's institutional interests, or where they are representative of the interest of a large class of members, the union will want to pursue the individual's grievance. However, the same is not necessarily true where his grievance does not excite anyone in the union.

Thus, while an employee's discharge may not be a terribly significant event from the union's point of view, it is tremendously important to him. Not only has he lost

his job and source of income, he may have lost considerable accrued seniority, vacation benefits, pension credits, health insurance for himself and his family, self-respect and family tranquility. Where it is widely and reasonably believed that his discharge was wrongful, the union's failure to vindicate his contract rights and the court's rebuff to his appeals for redress can have a devastating impact upon employee morale and respect for law. The political implications, particularly at a time when faith in our legal institutions has been eroded by other events, cannot be ignored.

While the duty of fair representation was designed to serve as a "bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress" (*Vaca v. Sipes,* 386 U.S. at 182), it does not function to protect Teamster members who are regularly vulnerable to arbitrary and collusive tactics of their employers and Union. Due to the unusual structure and method of operation of Teamster Joint Committees, and in light of the current judicial criteria for evaluating their decisions, the Union and trucking employers have virtually immunized themselves from judicial challenge by aggrieved individuals for their wrongful conduct. Whatever the merits of adopting a more refined judicial approach for determining when other unions have breached their duty of fair representation in cases brought by individuals who are covered by contracts containing provision for impartial arbitration, there can be no question that a new, or more enlightened approach is required for determining when to defer to Teamster Joint Committee decisions in individual discharge cases.[22]

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[22] There have recently been a number of thoughtful articles reviewing and analyzing the post-*Vaca* case developments and offering suggestions for tightening the duty of fair representation. Feller,

(continued)

It will be incumbent on the courts to recognize that such decisions may have resulted from employer-union collusion, that they may not be based upon objective criteria or contract provisions, and that they at most represent only a decision by the Union not to process the member's breach of contract claim. The difficulty will enter where the courts attempt to evaluate the Union's decision not to press the grievance under the *Vaca* standards. Unfortunately, Joint Committee decision-making is not currently an open process which permits close judicial scrutiny.

Professor Feller has suggested the need to develop principles of law to be applied when parties come to the courts alleging a malfunction of their collective bargaining adjudicative system. As a general proposition, he recommends that they "should conform to, rather than conflict with, the norms of the system *except where it is consciously decided that these norms must be disregarded to safeguard otherwise unprotected interests.*" Feller, *supra*, pp. 772-773. *Amici* submit that the Teamster Joint Committee system is so lacking in procedural safeguards for individual employees

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22 (continued) *A General Theory of the Collective Bargaining Agreement*, 61 *Calif. L. Rev.* 663 (1973); Clark, *The Duty of Fair Representation: A Theoretical Structure*, 51 *Tex. L. Rev.* 1119 (1973); Comment, *Post-Vaca Standards of the Union's Duty of Fair Representation*, 19 *Vill. L. Rev.* 885 (1974); Flynn & Higgins, *Fair Representation: A Survey of the Contemporary Framework and a Proposed Change in the Duty Owed to the Employee*, 8 *Suffolk U. L. Rev.* 1096 (1974); Tobias, *A Plea for the Wrongfully Discharged Employee Abandoned by his Union*, 41 *U. Cin. L. Rev.* 55 (1972); Tobias, *Individual Employee Suits for Breach of the Labor Agreement and the Union's Duty of Fair Representation*, 5 *Toledo L. Rev.* 514 (1974).

that its decisions disposing of their individual grievances should not be entitled to a judicial presumption of regularity and fairness. At the very least, the courts should be instructed to defer in such cases only where the Joint Committee decision sets forth in sufficient detail a rationale which would permit them to evaluate the decision to abandon the member's grievance under an "arbitrary test" similar to that used in evaluating the final decisions of administrative agencies under the Administrative Procedure Act.[23] There can be no doubt that a judicial standard for review which permits an employer covered by the Teamsters Master Freight Agreement to get away scott free because an employee cannot prove union malice or bad faith tips the balance too heavily against the individual and in favor of permitting the Teamsters Union unbridled flexibility in administering the contract. The effect is clearly violative of *Vaca*.[24]

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23 This test is specifically advocated by Professor Feller in his discussion of "Propositions" at pages 773 *et seq.* It is echoed by other commentators. *See* fn. 22, *supra.* The test would be similar to the one in effect applied by this Court in *Humphrey v. Moore, supra.* Moreover, in its opinion in *Enterprise Wheel*, the Court recognized that a well reasoned opinion "tends to engender confidence in the integrity of the process and aids in clarifying the underlying agreement." 363 U.S. at 598.

24 The necessity of a showing of bad faith utilized by most post-*Vaca* courts may derive in part from Mr. Justice Harlan's majority opinion in *Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1971). In discussing a union's duty of fair representation, the Court stated that the doctrine "carries with it the need to adduce substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives . . . ." *Id.* at 301. However, Lockridge did not sue his company under §301 for breach of contract since his discharge had resulted from a union request on the grounds that he had breached the union security clause by non-payment of dues. Thus,

(continued)

CONCLUSION

For the foregoing reasons, *amici* respectfully submit that the Court of Appeals' decision upholding dismissal of the employer from an employee §301 breach of contract suit should be reversed and that the case should be remanded with appropriate instructions concerning the proper judicial standards to be applied in such cases.

Respectfully submitted,

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July 3, 1975

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[24] (continued) the Court's discussion of the duty of fair representation paralleled its discussion in the *Huffman* and *Humphrey* cases where the principal issue also concerned only the reasonableness of union action in a context where the union required flexibility. The same considerations do not, however, generally pertain in §301 suits by individual employees against their employers for breach of contract. The employee's claim generally involves a relatively simple construction and application of contract provisions and does not conflict except to the extent the union might wish to trade off his meritorious grievance in exchange for some other management concession which might benefit the union's institutional interests more directly. We submit that such trade-offs should not be encouraged by a policy of judicial deference. To do so would erode employee respect for law and would jeopardize the entire foundation of the system of industrial self-government this Court and the Congress have sought to nurture.

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Supreme Court of the United States

October Term, 1974

No. 74-1025

BURTICE A. HINES, *et al.*,
Petitioners,

vs.

ANCHOR MOTOR FREIGHT, INC. *et al.*,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPONDENT ANCHOR MOTOR FREIGHT'S OBJECTIONS TO THE MOTIONS OF THE AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS, PROD, INC., JAMES BANYARD AND GEORGE E. KISS FOR LEAVE TO FILE BRIEFS AMICI CURIAE

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Supreme Court of the United States

October Term, 1974

No. 74-1025

BURTICE A. HINES, *et al.*,
Petitioners,

vs.

ANCHOR MOTOR FREIGHT, INC. *et al.*,
Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

RESPONDENT ANCHOR MOTOR FREIGHT'S OBJECTIONS TO THE MOTIONS OF THE AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS, PROD, INC., JAMES BANYARD AND GEORGE E. KISS FOR LEAVE TO FILE BRIEFS AMICI CURIAE

Pursuant to Rule 42 of the Supreme Court Rules, Respondent Anchor Motor Freight, Inc. objects to the motions for leave to file briefs amici curiae filed by both the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) and PROD, Inc., James Banyard and George E. Kiss, on the following grounds:

1. PROD, Inc., James Banyard and George E. Kiss do not have a sufficient interest in the proceedings; their presence is not relevant to the disposition of this case; and, to any degree in which it might be relevant, their

position has been and will be adequately presented by the other parties in this matter.

2. The position of the AFL-CIO has been and will be adequately presented by the parties.

I. PROD, Inc., James Banyard and George Kiss Should Not Be Allowed to File Briefs as Amici Curiae.

A motion for leave to file a brief as amici curiae has been filed by PROD, Inc., James Banyard and George Kiss.

These applicants allege that their interests in these proceedings arises out of their familiarity with the structure and workings of joint committees *similar* to the committee involved in this case. However, the structure and workings of joint committees is not in issue before this Court.

Neither Banyard nor Kiss nor PROD has an interest in this case. It would not be appropriate to allow Banyard, who was an unsuccessful grievant in unrelated proceedings before a different joint committee, to use this case as a vehicle in a propaganda campaign against all Teamster joint committees. Kiss claims an interest by virtue of his membership in Local 377 and by virtue of the fact that he works under a *different* Teamster contract. Neither of these reasons is sufficient. Counsel for Local 377 will adequately protect his interest as a member of that union. The collective bargaining agreement under which he works is totally irrelevant to this case.

PROD, Inc. has absolutely no stake in this lawsuit. The safety and health of truck drivers is not involved here. PROD's alleged familiarity with *similar* (but different) joint grievance committees can be of no use to this Court in resolving the issues of this case.

In addition, the issue which these applicants wish to raise, i.e., that courts should not defer to joint grievance

committee decisions, is not the issue involved. It should not be considered by this Court, as it was neither raised nor discussed by any party or court in the proceedings below.

PROD, Inc. has no legal or factual relationship to this lawsuit. If it has any, it is duplicative of Teamster interests.

II. The Position of the AFL-CIO Has Been Presented by the Other Parties.

In its motion, the AFL-CIO stated that the parties have "concentrated on the particular circumstances of this case." It is their position that "this emphasis serves to obscure the basic truth that this case is governed by *Vaca*." This reliance on *Vaca v. Sipes* is precisely the position advocated by the petitioners. The AFL-CIO has failed to demonstrate why this argument will not be adequately presented by the petitioners.

The AFL-CIO describes its interest in these proceedings as a result of the large number of men and women it represents. However the applicant has failed to explain why the International Brotherhood of Teamsters, which also represents large numbers of workers, will not adequately represent working men and women as a whole.

This movant's desire to concentrate on matters other than "the particular circumstances of this case" because "this emphasis serves to obscure the basic truth . . . " denies a basic tenet that "[w]hile this Court decides questions of public importance, it decides them in the context of meaningful litigation." *The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180 (1959).

CONCLUSION

For the foregoing reasons the motions for leave to file briefs amici curiae should be denied.

Respectfully submitted,

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v.

ANCHOR MOTOR FREIGHT, INC., ET AL., *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENT, LOCAL UNION NO. 377's OBJECTIONS TO THE MOTION OF PROD, INC., JAMES BANYARD AND GEORGE E. KISS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

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On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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RESPONDENT, LOCAL UNION NO. 377's OBJECTIONS TO THE MOTION OF PROD, INC., JAMES BANYARD AND GEORGE E. KISS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

Pursuant to Rule 42, ¶ 4 of the Rules of this Court, respondent Local Union No. 377 objects to the motion

of PROD, Inc., James Banyard and George E. Kiss for leave to file a brief as *amici curiae* because that brief is an imposition on the Court:

1. PROD, Inc., James Banyard and George E. Kiss seek leave to file a brief raising an issue that is not properly before this Court. No claim was made either in the district court or in the court of appeals that joint grievance committee rulings are unworthy of judicial deference. Indeed, the record is barren of evidence relating to the operation of joint grievance committees and proposed amici's sources with respect thereto are altogether secondary. Under these circumstances there is surely "no cause for deviating from our normal policy of not considering issues which have not been presented to the Court of Appeals and which are not properly presented for review here." *Neely* v. *Eby Construction Co.*, 386 U.S. 317, 330. See also *Adickes* v. *Kress & Co.*, 398 U.S. 144, 147, n. 2. Nor is the issue fairly encompassed within the petition for certiorari which this Court agreed to consider in its limited grant. Accordingly, PROD et al. are in violation of this Court's Rule 23.1(c). See e.g., *F. D. Rich Co.* v. *Industrial Lumber Co.*, 417 U.S. 116, 121, n. 6. Since the issue may not properly be reviewed here, the tendered brief has no relevance whatever to the disposition of this case.

2. PROD, Inc., James Banyard and George E. Kiss have no adequate interest in this litigation. PROD's claimed membership together with Messrs. Banyard and Kiss are complete strangers to the collective bargaining agreement involved in this case, and prove it by presenting argument addressed to the operation of an essentially different grievance procedure under a

contract not involved in this case, the National Master Freight Agreement.

Respectfully submitted,

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